TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 154

MANUEL D. TALLEY, PETITIONER,

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PETITION FOR CERTIORARI FILED APRIL 16, 1959.

CERTIORARI GRANTED JUNE 29, 1959.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

INDEX

[fols. 1-4] [File endorsement omitted]

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Booking No. —

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MANUEL D. TALLEY, Defendant

COMPLAINT—Filed April 2, 1958

Personally appeared before me, the undersigned, who, first being duly sworn, complains and says: That on or about March 22, 1958, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit: Violation of Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) was committed by Manual D. Talley (whose true name to affiant is unknown), who at the time and place last aforesaid, did wilfully and unlawfully in the City of Los Angeles, distribute a handbill which did not then and there have printed on the cover and on the face thereof, the name and address of the person who printed, wrote, compiled or manufactured the said handbill, and the name of the person who caused the same to be distributed and the true names and addresses of the owners, managers or agents of the fictitious person and club which sponsored said handbill.

All of which is contrary to the law in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant that he may be dealt with according to law.

Subscribed and sworn to before me on April 2, 1958.

C. McClendon.

George J. Barbour, Clerk of the Municipal Court of Los Angeles Judicial District, in said County and State.

By Francis P. O'Keefe, Deputy Clerk. (MC 28.06).

[Vol. 5]

H. SIMMONS
H Simmons

MUNICIPAL COURT PROCEEDINGS

Date

APR 2 1958 DEFT. NOTIFIED TO APPEAR IN DIV. 30-A ON 4/8/58 @ 9:30 a.m.

Defendant in Court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged

and enters his plea of ..... guilty of the offense charged

Denies Admits—prior conviction charged.

Bail fixed at $ ..... Dollars

APR 8 1958 Cont apr 28 Div 30 @ 11 A M.
Div 30A

Continued for Plea Defendant released O R

APR 28 1958 demurrer overruled
Leave to file written motion granted

Plea not guilty. Jury trial in Div. 7 on 5-27

..... at 9 a. m. Bail $ .....

MAY 27 1958 Defendant released O R

Jab Talk

ATTY
H. SIMMONS

J. W D146

Deft found G. not H T Denied

5/27/58 $ 15 or 2 days - Stay 330 PM
$ 10.00 Cost appeal bond $ 8321 0 P

No. 91437

APR 28 1958

WITNESSES:

Sgt. C. McClendon #14

IN THE

MUNICIPAL COURT

of

Los Angeles Judicial District,

County of Los Angeles, State of California

The People of the State of California,
PLAINTIFF,

vs.

MANUEL D. TALLEY,

DEFENDANT

COMPLAINT

Filed April 2, 1958

GEORGE J. BARBOUR,
Clerk of the Municipal Court
of Los Angeles Judicial District,
County of Los Angeles, State of California.

By Frances J. O'Keefe
Deputy Clerk

Issued by

ROGER ARNEBERGH
City Attorney

By John M. Concannon
J. M. Concannon Deputy City Attorney

[fols. 6-8] In the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California

Division No. 6

Hon. John G. Barnes, Judge

No. 81,437

Vio. Sec. 2806, LAMC

The People of the State of California, Plaintiff,

vs.

Manuel D. Talley, Defendant

Reporter's Transcript of Proceedings

Tuesday, May 27, 1958

Appearances:

For the People: Richard E. Stewart, Esq., Deputy City Attorney.

For the Defendant: Simmons & Simmons, by: Herbert W. Simmons, Esq.

[fol. 9] Los Angeles, California, Tuesday, May 27, 1958, 10:45 A. M.

The Court: People vs. Manuel D. Talley.

Mr. Simmons: May I have just a second, your Honor?

Mr. Stewart: Has there been a jury waiver by the defendant in this case?

Mr. Simmons: No, he hasn't personally waived.

The Court: Mr. Talley, do you want the Court to try your case without a jury, or do you want a jury trial?

The Defendant: A court trial, your Honor.

The Court: Do you join in the waiver, gentlemen?

Mr. Stewart: Join in the waiver, your Honor.

Your Honor, I believe we have a stipulation in this particular matter. I discussed it with the defendant and his counsel. The People and the defendant will stipulate that the defendant was distributing handbills on the day in

question, March 22, 1958. The stipulation, I believe, is that Sergeant McClennon and three other citizen witnesses received handbills distributed by the defendant in this case; and I believe it is stipulated that the two handbills I have in my hand at this time will be received in evidence as exhibits.

Mr. Simmons: So stipulated, your Honor.

OFFER IN EVIDENCE

The Court: Very well, they will be received as one exhibit, People's Exhibit 1.

[fol. 10] (Whereupon the documents referred to, to wit, two handbills, were received in evidence as People's Exhibit 1.)

Mr. Stewart: The People will rest on that stipulation, your Honor.

The Court: Very well.

Mr. Stewart: Also, if your Honor please, that this particular act took place in the City of Los Angeles, namely, at 55th and Holmes, which is in the City of Los Angeles.

The Court: Do you join in that portion of the stipulation?

Mr. Simmons: I'm sorry?

The Court: That the act of distribution occurred in Los Angeles City?

Mr. Simmons: We will join in that portion of the stipulation.

Mr. Stewart: Thank you.

Mr. Simmons: The defendant will call Mr. Lacour.

EARL LACOUR, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Earl Lacour.

The Clerk: Spell your last name.

[fol. 11] The Witness: L-a-c-o-u-r.

Direct examination.

By Mr. Simmons:

Q. You are employed by the A & D Supermarket, is that correct?

A. That is correct.

Q. How long have you been so employed?

A. About six years.

Q. And this A & D Market is the market that is located at 5501 Holmes Avenue, is that right?

A. That's right.

Q. I hand you Exhibit A and ask you to read that--read this document where it says "We are boycotting A & D Market at 5501 Holmes Avenue"——

Mr. Stewart: Your Honor, at this point I am going to object to this last question——

The Court: What is the basis of it?

Mr. Stewart: On the grounds that it is immaterial to the issues in the case—irrelevant as to what the exhibit states.

The Court: He is merely asking the witness to read it; that was the question.

Mr. Stewart: All right, I will withdraw the objection.

[fol. 12] By Mr. Simmons:

Q. Did you read that, is that right?

A. Yes, I read it.

Q. And that is the same market that you work at, is that right?

A. Yes.

Mr. Simmons: I have in my hand, your Honor, a document; may it be marked Defendant's A for identification?

The Court: Defendant's A for identification.

By Mr. Simmons:

Q. I hand you this document and ask you to examine it: have you examined it?

A. Yes.

Q. Have you ever seen that document or similar documents?

A. Similar; I wouldn't say this is the exactly one.

Q. But you have seen similar documents, is that right?
A. True; yes.
Q. Can you tell us what that document is?
A. Well, this is just advertising a food sale.

The Court: It is what?
The Witness: Advertisement of food sales.

By Mr. Simmons:

Q. An advertisement of food sales for the A & D Market, is that right?
[fol. 13] A. Yes, A & D Market.
Q. And that's the market you are employed at, is that right?
A. That's right.
Q. Now, during your employment at this A & D Market have similar documents or leaflets been distributed?
A. Yes, we distribute——

Mr. Stewart: Wait. Again, your Honor, I will object to this question on the grounds it is irrelevant and immaterial to the issues in this particular case.
The Court: How is it relevant?
Mr. Simmons: Your Honor, we intend to rely, as an additional defense, on the constitutionality of this, and also the unequal enforcement of the law.
The Court: Objection is overruled.

By Mr. Simmons:

Q. Will you answer the last question?
A. We put up handbills for advertisement.
Q. And these handbills are distributed on the public street, is that right?
A. That's right.
Q. What is your experience as to how often these handbills are put out?
A. Every weekend.
Q. And every weekend they are distributed on the public streets, is that right?
[fol. 14] A. That's right.
Q. To your knowledge has there ever been any criminal prosecutions for putting out these handbills?

A. No, not advertising sales.

Q. There has been no prosecution, is that right?

A. No.

Q. And it is your testimony that these handbills are similar— .

A. They are similar, but it is not ours.

Q. They vary as to content, is that right?

A. Yes.

OFFER IN EVIDENCE

Mr. Simmons: May this be introduced (indicating)?

The Court: It will be received as Defendant's A.

(Whereupon the document referred to, to wit, an advertising handbill, was received in evidence as Defendant's Exhibit A.)

Mr. Simmons: That's all.

The Court: Any questions?

Mr. Stewart: Yes, two questions, your Honor.

Cross-examination.

By Mr. Stewart:

Q. Mr. Lacour, you have identified this as an announcement of a food sale?

A. Yes.

Q. Now, would you read the printing or writing on the [fol. 15] bottom of that exhibit.

A. Yes; "A & D Supermarket, 55th and Holmes Avenue." Could I say something?

The Court: Not right now; you will have to wait for a lawyer to ask you a question.

By Mr. Stewart:

Q. This is a circular put out by the market for whom you work?

A. Not that particular circular, no.

Q. Not this particular circular?

A. No, because the ones that are put out either is made by the Carnation Company, and they are stamped at the bottom, "Carnation Company."

The Court: Wait just a minute; read that last, please.

(Whereupon the record was read by the reporter.)

The Court: Keep your voice up, Mr. Lacour.

By Mr. Stewart:

Q. Then to your knowledge, Mr. Lacour, the A & D Supermarket did not put that poster up?

A. Not that particular bill, no.

Q. And they did not cause it to be distributed to your knowledge?

A. Not that particular bill.

Mr. Stewart: This being the case, your Honor, I move that the exhibit be stricken from the evidence.

[fol. 16] The Court: Motion is denied.

Mr. Stewart: No further questions.

Mr. Simmons: May this document that I have in my hand be marked for identification, your Honor?

The Court: Yes.

Redirect examination.

By Mr. Simmons:

Q. I hand you another document and ask you to examine that; have you examined it?

A. Yes.

Q. Do you recognize it?

A. No, I don't.

Q. You don't recognize this at all?

A. No, I don't.

Mr. Simmons: That's all.

The Court: Anything further?

Mr. Stewart: I have no questions.

The Court: You may step down.

Call your next witness.

Mr. Simmons: The defendant calls Manuel Talley to the stand.

[fol. 17] MANUEL D. TALLEY, the defendant herein, called as a witness by and on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.
The Witness: Manuel D. Talley.

Direct examination.

By Mr. Simmons:

Q. Mr. Talley, I hand you Defendant's A for identification and ask you to look at that; have you seen that document or similar documents before?

A. I have.

Q. And where did you see that?

A. Well, I have seen a handbill identical to this one pasted in the glass doorway of the A & D Market.

Q. Have you seen similar ones?

A. Yes, on several different weekends I have seen different handbills all very similar in format.

Q. Now, at the bottom of these handbills, do they have any other identification mark than "A & D Market"?

A. No.

Q. At the bottom do they have any statement as to who wrote, compiled, or manufactured the handbill?

A. Up until, oh, about the latter part of March there was no indication on the handbills that were pasted in the [fol. 18] glass door as to who had written or printed them.

Q. Or on these other handbills you refer to, there was no indication?

A. There was no indication, no.

Q. This was after your arrest in this case?

A. Yes, after my arrest in this case I noticed on the handbill ——

Q. Just after your arrest you noticed the change, is that right?

A. That is right.

Q. Did these handbills that you saw before your arrest, did they have on them "the herein, who causes the same to be distributed ——"

A. There was no name of anyone indicating that that person was causing the handbills to be distributed.

Mr. Simmons: Counsel, will you stipulate that the A & D Market, a supermarket, is a fictitious name?

Mr. Stewart: I will stipulate—yes, so stipulate.

Mr. Simmons: A & D Supermarket; is that right, Counsel?

The Court: Do you know that it is, Mr. Simmons?

Mr. Simmons: Yes, your Honor.

The Court: It isn't a corporation?

Mr. Simmons: I don't know that, your Honor.

Mr. Stewart: I can't stipulate to that, your Honor; I [fol. 19] don't know.

The Court: The reason I asked the question is that I feel quite sure; Counsel, if you knew it and were to state that to Counsel, as an officer of the Court, he would be glad to stipulate with you.

Mr. Simmons: No, I can't actually say that it is not a corporation.

The Court: Very well.

By Mr. Simmons:

Q. Now, Mr. Talley, calling your attention to after the date of your arrest on this charge, I want you to examine this document which has been marked Exhibit B for identification, and I ask you to examine that——

The Court: Apparently he has done so.

By Mr. Simmons:

Q. Now, can you tell us what that document is?

A. This is a handbill advertising a food sale at the A & D Supermarket, 55th and Holmes.

Q. On that was there a change from the prior handbills?

A. The change in format that I noticed is a statement along the lower right as saying that it's printed by the Hollywood Lithograph——

Q. —Company; is that right?

A. That's right.

Mr. Simmons: That's all.

[fol. 20] The Court: Any questions.

Mr. Simmons: May that document be introduced as Exhibit B in evidence, your Honor?

The Court: Yes, I will receive it.

(Whereupon the document referred to, to wit, a handbill, was received as Defendant's Exhibit B in evidence.)

Cross-examination.

By Mr. Stewart:

Q. Is it your testimony that you observed this particular handbill being distributed by the A & D Supermarket?

The Court: This is Exhibit B you are talking about now.

The Witness: It is my testimony that I have seen handbills identical to this handbill pasted in the doorway—pasted on the glass door of the A & D Supermarket; this is not the handbill, however, that was pasted on the door. This was received from a person living in the community who stated that he had received it; it was on his gate, as a matter of fact.

By Mr. Stewart:

Q. In fact, on the bottom of this handbill we have the statement, "A & D Supermarket"?

A. "A & D Supermarket"?

Mr. Stewart: Nothing further.

[fol. 21] Redirect examination.

By Mr. Simmons:

Q. You say this person stated to you it was on his gate, is that right?

A. Yes; well, as a matter of fact——

Mr. Stewart: I object to anything that a person stated, on the grounds that it is hearsay.

Mr. Simmons: This is brought out on cross-examination.

The Court: Yes, you developed it on your cross-examination. He testified to what somebody told him. It's in evi-

dence, and it wasn't objected to, and no motion to strike was made.

By Mr. Simmons:

Q. This was on a public thoroughfare, is that right, this gate?

A. That is right; it's a private dwelling house.

Mr. Simmons: That's all.

The Court: You may step down.

Call your next witness.

Mr. Simmons: Call Jack Fortson to the stand.

Jack C. Fortson, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

[Vol. 22] The Witness: Jack C. Fortson, F-o-r-t-s-o-n.

Direct examination.

By Mr. Simmons:

Q. You are employed by the A & D Market?

A. No, I'm not.

Q. Have you been employed by them?

A. Never.

Mr. Simmons: No questions.

The Court: Any cross-examination?

Mr. Stewart: No questions.

The Court: You may step down.

Mr. Simmons: I'd like to call the first witness back for one question, your Honor.

Earl Lacour, recalled as a witness by and on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Further direct examination.

By Mr. Simmons:

Q. Mr. Lacour, you have been previously sworn in this case: who is the owner of the A & D Supermarket?

A. Victor Mirolla, M-i-r-o-l-l-a.

Q. And he is the sole owner of the store?

[fol. 23] A. Yes.

Q. Is he doing business under the fictitious name of "A & D Supermarket"?

A. That is right.

The Court: It isn't a corporation?

The Witness: It's not a chain corporation, no.

The Court: Do you know whether or not Mr. Mirolla is the owner of a corporation doing business under that name?

The Witness: It's between him and his dad and his mother.

The Court: Is it a corporation; do you know?

The Witness: Yes, the three of them.

The Court: All right.

The Witness: And he is not the one sole owner.

By Mr. Simmons:

Q. Is it a corporation or a partnership?

The Court: Or do you know?

The Witness: I really don't know—no, I don't. I know he is the manager of the market.

By Mr. Simmons:

Q. Have you ever seen any corporation papers around the store?

A. No.

The Court: If you are trying to prove one or the other, as a matter of record, Mr. Simmons—it shouldn't be proven that way: that is, assuming that the law has been followed.

[fol. 24] They would have to file at the proper place a certificate of doing business under a fictitious firm name, or the corporation commissioner's office would have the corporate files—one or the other.

Mr. Simmons: May I speak to Counsel for a moment?

(Brief interruption.)

Mr. Simmons: All right; that's all.

Mr. Stewart: No questions.

The Court: You may step down.

Call your next witness.

Mr. Simmons: Nothing further, your Honor.

The Court: Any other witnesses?

Mr. Stewart: None for the People.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Simmons: Your Honor, I would like to have permission to find out whether or not this is a corporation, and submit it to your Honor.

The Court: Well, we have got to dispose of these things some time, Mr. Simmons. Let us assume for the purposes of this matter it is a fictitious firm name——

Mr. Simmons: All right; my client tells me that he did search the records, and he found that it was a fictitious——

The Court: All right; I will assume that it was a fictitious firm name.

Mr. Simmons: May that be part of the evidence?

The Court: It will be part of the evidence on your [fol. 25] behalf.

Mr. Simmons: All right, submitted.

Mr. Stewart: Submitted, your Honor.

The Court: Your defense of unconstitutionality based upon the lack of uniform enforcement, pursuant to the Yick Wo vs. Hopkins case, and the other cases, which have come down since—a number of them—by the California courts falls short of proof.

As far as the violation is concerned, it is apparent there is a violation here.

Mr. Simmons: In addition to that, your Honor, my main argument is the unconstitutionality of the statute; but in fairness to Counsel I am not going to argue that strenuously. I imagine it is the first time he saw this case, and

the case has not been decided by the Supreme Court of the United States at this particular point, but it was decided in People vs. Arnold—a case that we handled directly——

The Court: What is the citation?

Mr. Simmons: CRA 3141, an opinion handed down on August 26, 1954. The Court decided against us in that case.

The Court: Against your contention?

Mr. Simmons: Against our contention, and we think the Appellate Department of the Superior Court was incorrect. [fol. 26] The Court: Who am I to argue with them? Those wise ones up there know much more about these things than I do.

Mr. Simmons: I know you would be bound by that, your Honor.

The Court: I am bound by their decisions.

The defendant is found guilty.

Mr. Simmons: Your Honor, time for sentence will be waived, and we would like to make at this time a motion for new trial.

The Court: Very well.

Mr. Simmons: On the grounds of the unconstitutionality of the statute and insufficiency of the evidence, and the unequal enforcement of the law.

The Court: Motion will be denied.

Mr. Simmons: May sentence be imposed at this time, your Honor?

The Court: Do you know anything about your defendant's background?

Mr. Simmons: Yes, I do. I have known the defendant personally the last twenty years, your Honor. As far as the defendant's criminal record, he was a conscientious objector during the course of the last conflict——

The Court: Well, that isn't a crime, is it?

Mr. Simmons: Well, he was at that time convicted of [fol. 27] being a conscientious objector—yes, it is a crime, your Honor; other than that, your Honor, this was his own personal conviction that got him involved.

SENTENCE

The Court: Ready for sentence?

Mr. Simmons: Yes, ready.

The Court: $10 or two days.

Mr. Simmons: May we have a stay of execution on that?

The Court: No, I do not give stays of execution on fines.

Mr. Simmons: Your Honor, we wanted to file—for purposes of filing an appeal, your Honor.

The Court: Well, you can pay the $10, and when you taken an appeal I will fix the bond on——

Mr. Simmons: But if we pay the fine now it becomes moot, your Honor.

The Court: No, it doesn't.

Mr. Simmons: This is always my understanding, that if the sentence would be served then the point would become moot.

The Court: If he does his time in jail, perhaps; but I don't think it is moot—that is not my understanding. I think if you will check it you will find——

Mr. Simmons: May we deposit the $10 and have it held until we file our appeal, because we will file it this afternoon immediately; but it is my understanding—I [fol. 28] have had experience at one time——

The Court: A stay until 3:30 p.m.

Mr. Simmons: Thank you.

[fols. 29-30] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 31] Judges Certificate to foregoing transcript omitted in printing.

[fol. 32] PEOPLE'S EXHIBIT # 1

National Consumers Mobilization, Box 6533, Los Angeles 55, Calif.

Pleasant 9-1576

We are boycotting the A and D Market at 5501 Holmes Avenue.

Why?

Because he carries in his store goods that come from manufacturers who w not offer equal employment opportunity to Negroes, Mexicans, and Orientals.

What are the unfair goods?

Our entire unfair list is at the center of this sheet. Articles with *'s by them are sold in grocery stores.

Why not trade at A & D Market but not buy the blacklisted goods?

If you buy a pound of meat, you help keep this business open so he can sell unfair bread or milk.

This boycott will probably last for six months. Do not trade at A & D Market until this boycott is over.

National Consumers Mobilization is boycotting all of these firms as part of its program for fair employment:

Automobile Dealers

J. B. Finney

Baking Companies

Helms
* Van de Kamp
* Bowie Pie Co.
* Bradley Pie Co.
* Langendorf-Barbara Ann

Beverage Companies

* Arrowhead
* Nehi

Milk Companies

* Knudson
* Challenge

* Sold in grocery stores.

Candy Companies

Juliette
Sally's Homemade

Food Companies

*Frito
*Kraft Food

Department Stores

Coulters
Haggarty's

Men's Stores

Desmonds

Shoe Stores

Wetherby-Kayser
C. H. Baker

Insurance Co.'s

National Life and Accident of Nashville, Tenn.

I believe that every man should have an equal opportunity for employment no matter what his race, religion, or place of birth.

I wish to support this program. Please enroll me as a member of National Consumers Mobilization.

Name Telephone
Address Zone ( ).
Dues: 25¢ per month. Amount paid with this application

National Consumers Mobilization, Box 6533, Los Angeles 55, Calif.

For further information, call Pleasant 9-1576.

---

* Sold in grocery stores.

[fol. 33] NATIONAL CONSUMERS MOBILIZATION

Post Office Box 6533

Los Angeles 55, California

Pleasant 9-1576

Don't buy anything at all between now and September 1, 1958, at the:

A AND D MARKET,
5501 Holmes Avenue,
Los Angeles.

The fair employment boycott will be continued from now until September 1, even though our pickets may not be in front of the store at all times.

Anything you buy at the A & D Market undermines the boycott.

Nick Mirolla, operator of the A and D Market, says he will close his market and move before he will cooperate in this fair employment program, which will open more jobs for Negroes, Mexicans and Orientals.

The A and D Market is helping the following employers to discriminate by selling their particular brands of goods:

Challenge milk
Kraft foods
Fritos
Bowie pies
Langendorf bakery goods
Nehi beverages

Other firms being boycotted by National Consumers Mobilization are:

Automobile Dealers

J. B. Finney

Baking Companies

Helms
* Van de Kamps
* Bradley Pie Co.
* Barbara Ann

*Sold in grocery stores.

Beverage Companies

* Arrowhead

Milk Companies

* Knudson

Candy Companies

Juliette
Sally's Homemade

Department Stores

Coulters
Haggarty's

Men's Stores

Desmonds

Shoe Stores

Wetherby-Kayser
C. H. Baker

Insurance Co.'s

National Life and Accident of Nashville, Tenn.

(Here follow 2 Photolithographs, side folios 34, 35)

* Sold in grocery stores.

DEFENDANT'S EXHIBIT "A"

SPRING FOOL DERBY

PLACE YOUR BETS you can't lose on our fine foods. Top quality costs no more here. Look over this list of buys for easy winter into-spring meals

LADY'S CHOICE
GRAPE JELLY
2 LB JAR **36¢**

Party Fruit Salad
(Makes 6 to 8 servings)

1 package (3 ounces) lemon-flavored gelatin
½ cup hot fruit cocktail syrup
½ cup lemon juice
2½ cups (#2 can) fruit cocktail
1½ cups (#211 can) pineapple tidbits
1 cup chopped nuts
½ cup chopped maraschino cherries
1 cup undiluted Carnation Evaporated Milk
2 tablespoons lemon juice

Dissolve gelatin in hot fruit cocktail syrup. Cool slightly. Add lemon juice, fruit cocktail, pineapple, nuts and cherries. Mix well. Chill until consistency of unbeaten egg white. Chill Carnation in refrigerator tray until soft ice crystals form around edges of tray (10 to 15 minutes). Whip until stiff (about 1 minute). Add 2 tablespoons lemon juice. Whip very stiff (about 2 minutes longer). Fold whipped Carnation into gelatin mixture. Spoon into 1½ quart mold. Chill until firm (about 2 hours). Unmold on lettuce and garnish with maraschino cherries.

FREE - For your copy of Carnation's latest recipe booklet, send to Mary Blake, Carnation Co., Dept 05-164, Los Angeles 19, California.

HUNT'S
CATSUP 14 OZ BTL **7/$1.00**

HUNT'S SOLID PACK
TOMATOES NO 2½ CANS **4/$1.00**

KRAFT
MAYONNAISE QT JAR **65¢**

GIANT SIZE
SURF **65**

HUNT'S NEW ENGLAND
PORK & BEANS **5/$1.00**

Carnation
MAKES 4 QTS **29¢**

Fresh Fruits & Greens

POTATOES 5 LBS **29¢**

LARGE SIZE
GRAPEFRUIT **4 for 25¢**

GREEN HEAD
CABBAGE **4¢** lb

GARDEN FRESH VEGETABLES AT ALL TIMES

FOODCRAFT KOSHER
PICKLES 15½ OZ JAR **22¢**

MEATS

PORK
SHOULDER ROAST 6 TO 8 LB AVG **39¢** lb

END CUT
PORK CHOPS **55¢** lb

TODAY'S FAVORITE

LEAN MEATY
PORK STEAKS **59¢**

FROZEN FOODS

RUPERT SOLE ft **53¢** lb

NORTHERN PIKE **49¢** lb

CERTI FRESH 8 OZ **BREADED SHRIMP** **59¢**

JAR

Party Fruit Salad

(Makes 6 to 8 servings)

- 1 package (3 ounces) lemon-flavored gelatin
- ¼ cup hot fruit cocktail syrup
- ½ cup lemon juice
- 2½ cups (#2 can) fruit cocktail
- 1½ cups (#2½ can) pineapple tidbits
- 1 cup chopped nuts
- ½ cup chopped maraschino cherries
- 1 cup undiluted Carnation Evaporated Milk
- 2 tablespoons lemon juice

Dissolve gelatin in hot fruit cocktail syrup. Cool slightly. Add lemon juice, fruit cocktail, pineapple, nuts and cherries. Mix well. Chill until consistency of unbeaten egg white. Chill Carnation in refrigerator tray until soft ice crystals form around edges of tray (10 to 15 minutes). Whip until stiff (about 1 minute). Add 2 tablespoons lemon juice. Whip very stiff (about 2 minutes longer). Fold whipped Carnation into gelatin mixture. Spoon into 1½ quart mold. Chill until firm (about 2 hours). Unmold on lettuce and garnish with maraschino cherries.

FREE For your copy of Carnation's latest recipe booklet, send to Mary Blake, Carnation Co., Dept. 05-164, Los Angeles 19, California.

FROZEN FOODS

RUPERT SOLE or NORTHERN PIKE 53¢ 49¢ 16

CERTI FRESH 8 OZ BREADED SHRIMP 59¢
8 OZ FISH STICKS 33¢

ECIALS for
'URS FRI SAT
N MAR 20-
22-23

TOMATOES

Hunt's TOMATOES

4 NO 2½ CANS 1

KRAFT

MAYONNAISE

65¢ QT JAR

MEATS

PORK SHOULDER ROAST 6 LB AVG 39¢ 16

END CUT PORK CHOPS 55¢ 16

TODAY'S FAVORITE

LEAN MEATY PORK STEAKS 59¢ 16

MISSISSIPPI BRAND BACON CELLO PKG 59¢ LB

Fresh Fruits & Greens

POTATOES 5 LBS 29¢

LARGE SIZE GRAPEFRUIT 4 FOR 25¢

GREEN HEAD CABBAGE 4¢ 16

GARDEN FRESH VEGETABLES AT ALL TIMES

FOODCRAFT KOSHER PICKLES 15½ OZ JAR 23¢

DUTCH CLEANSER 2 GIANT SIZE CANS 23¢

MONEY ORDERS
AY your UTILITY BILLS
'T A&D MARKET

VAN CAMPS CHUNK STYLE TUNA 4 CANS $1

A and D SUPER MARKET...

55TH AND HOLMES AVENUE

B

TODAY'S BEST BUY... FRYERS

SPECIALS FOR THURS. FRI. SAT. SUN. MARCH 27 28 29 30

Menu of the week – Roast leg of lamb and all the trimmings . . . You'll find "headliners" in all our meats. Always tender, they go further too! We pre-trim excess fat and waste before weighing.

MEAT SPECIALS

USDA GRADE A
FRYERS
WHOLE OR CUT-UP
39¢ lb

ARMOUR BRAND
BACON
1-LB PKG
55¢

LAMB
SHOULDER
CHOPS
79¢ lb

CUDAHY'S CANNED
PICNIC HAMS
4 LBS
$2.99

Fresh lean
GROUND CHUCK
55¢ lb

Lamb Savory with Rice

Makes almost four meals

1 tablespoon butter
½ cup (4 ounces) coarsely sliced mushrooms
1 tablespoon flour
1½ cups large can undiluted Carnation Evaporated Milk
1 cup (½ pound) grated process American cheese
1 teaspoon salt
¼ teaspoon pepper
¼ teaspoon thyme
1 tablespoon grated onion
2 cups cubed cooked lamb (left over roast may be used)
3 cups cooked rice

Melt butter in saucepan. Add mushrooms and cook until browned. Stir in flour. Add Carnation slowly, stirring constantly. Cook over low heat until thickened. Add cheese, salt, pepper, thyme and onion. Stir until cheese melts. Add cubed lamb. Heat thoroughly. Serve over cooked rice.

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MAGIC GARDEN
GRAPEFRUIT JUICE
46-OZ CANS
4 for $1

MAHATMA long grain
RICE
3-LB CELLO BAG
49¢

SEA GLORY chunk-style
TUNA
4 CANS $1

GOLD MEDAL
FLOUR
10 LBS
$1.09

REG SIZE
SURF
26¢

CARNATION INSTANT NONFAT DRY MILK
MAKES 4 QUARTS
29¢

PRODUCE

U.S. NO. 1 WHITE ROSE
POTATOES
5 POUNDS
29¢

RED VELVET
YAMS
3 LBS
25¢

WATCH FOR OUR
NEW
STORE HOURS
COMING SOON!
6 A.M. TO 2 A.M.

SIMPLE SIMON
APPLE PIES
9-INCH
2 for 59¢

MAXWELL HOUSE
INSTANT COFFEE
6-OZ JAR
$1.15

HUNT'S
TOMATO PASTE
6-OZ CANS
15¢ / $1

HEARTS DELIGHT
PEACHES
4 / $1

SUDANYS CANNED
PICNIC HAMS 4-LBS $2.98

Fresh lean
GROUND CHUCK 55¢

Mary Blake Carnation Co Dept P-164
Los Angeles 19 California

MAGIC GARDEN
GRAPEFRUIT JUICE
46-OZ CANS 4 / 1.

REG SIZE **SURF** 26¢

CARNATION INSTANT NONFAT DRY MILK
MAKES 4-QUARTS 29¢

PRODUCE

U.S NO 1 WHITE ROSE
POTATOES
5 POUNDS 29¢

RED VELVET
YAMS 3 LBS 25¢

Green
PIPPIN APPLES 5 LBS 29¢

WATCH FOR OUR
NEW STORE HOURS
COMING SOON!!
6 A.M. TO 2 A.M.

SIMPLE SIMON
APPLE PIES
9-INCH 59¢

2 TALL CANS 27¢
4 SMALL CANS 27¢

MAXWELL HOUSE
INSTANT COFFEE 6-OZ JAR $1.15

HUNT'S
TOMATO PASTE 6-OZ CANS 15 / $1.

HEARTS DELIGHT
PEACHES NO 2½ CANS 4 / $1.

HEART'S DELIGHT SOLID-PACK
TOMATOES NO 303 CANS 6 / $1.

SUNSHINE HI HO
CRACKERS 1 LB BOX 35¢

BIG TREAT VANILLA OR FUDGE RIPPLE ½-GAL 3 / $1.

RUPERT'S
SOLE 53¢

A and D SUPER MARKET...

55TH AND HOLMES AVENUE

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[fol. 36] In Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California

CR. A: 3865

No. 81437

People of the State of California, Plaintiff,

vs.

Manuel D. Talley, Defendant

Docket Entries

Apr. 2, 1958. Complaint filed and sworn to by C. McClendon charging the defendant with having on March 22, 1958 at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to wit:

Violation of Section 28.06 of the Los Angeles Municipal Code.

Apr. 2, 1958. Defendant notified to appear in Division 30-A on April 8, 1958 at 9:30 A.M.

Apr. 8, 1958. Motion filed.

Cause called. Judge Donald M Redwine presiding. Both parties ready. People represented by J. L. Denny (D.C.A.). Defendant represented in propria persona.

Defendant in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and asks time to plead. Ordered to appear and plead April 28, 1958 at 11:00 A.M. in Division 30-A.

Defendant released on own recognizance.

Apr. 28, 1958. Cause called. Judge Evelle J. Younger presiding. Both parties ready. People represented by J. L. Denny (D.C.A.). Defendant in court and represented by H. Simmons, attorney.

Demurrer overruled. Leave to file written motion granted.

Defendant in court, duly arraigned informed of the charge against him and of his legal rights. Defendant gives true name as charged and enters his Plea of Not Guilty of the offense charged above.

Trial set for May 27, 1958 at 9:00 A.M. in Div. 7.

Defendant released on his own recognizance.

May 27, 1958. In this case Grace A. Summers, Reporter is ordered to take down proceedings as provided by law. Division 7 convened at 9:00 A.M. Cause called. Judge David W. Williams presiding. Both parties ready. People represented by Donald R. Bringgold (D.C.A.). Defendant in court and represented by H. Simmons. J. B. Nisbet, *Deputy Clerk.*

[fol. 37] May 27, 1958. People and defendant with counsel in open court each personally waives jury trial.

Transferred to Division 6 for trial.

In this case Norman Tulin, Reporter is ordered to take down the proceedings as provided by law.

Division 6 convened at 9:30 A.M., Cause called. Judge John G. Barnes presiding. Both parties ready. People represented by R. E. Stewart (D.C.A.). Defendant in court and represented by H. Simmons. C. Hegler, Deputy Clerk.

People and defendant with counsel in open court each personally waives jury trial.

Counsel stipulated that the handbills were distributed on day in question, that Sergeant McClennon and three witnesses received the handbills, and that two handbills be received in evidence. Further stipulated that event occurred at 55th and Holmes Street, in City of Los Angeles.

People rest.

Witnesses sworn and examined for Defendant:

Earl Lacour
Manuel D. Talley
Jack Fortsan
Earl Lacour (recalled)

Defendant rests.

People's Exhibits:

1. (2) two handbills

Defendants Exhibits:

A, Handbill marked for identification.
Defendant's Exhibit "A" now ordered in evidence.
B. Handbill marked for identification.
Defendant's Exhibit "B" now ordered in evidence.
Cause submitted.

Defendant adjudged Guilty of the offense charged.

[fol. 38] May 27, 1958. Defendant waives time of sentence.

Motion of defendant for a new trial denied.

Judgment

Defendant in court and having been duly arraigned for judgment and there being no legal cause why judgment should not be pronounced.

"It is adjudged and ordered by the court that as a punishment for the crime of Violation of Section 28.06 of the Los Angeles Municipal Code, the defendant Manuel D. Talley shall pay a fine in the sum of $10.00 and that in default of the payment of said fine prior to 5:00 P.M., of 5-27-58 said defendant shall be imprisoned in the City Jail of the City of Los Angeles at the rate of one day's imprisonment for each five dollars of said fine until said fine is wholly satisfied, not exceeding however 2 days and that said defendant shall be discharged from imprisonment upon payment of such remaining portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed or upon the expiration of said maximum number of days, whichever event occurs sooner".

Stay to 3:30 P.M.

May 27, 1958. Notice of Appeal and Stay of execution filed.

Execution of judgment and sentence hereby stayed pending Appeal. Appeal bond set at $10.00.

Cash Appeal Bond of $10.00 posted on Receipt #83210P.

June 2, 1958. Statement on Appeal filed with Affidavit of Service By Mail.

June 16, 1958. Reporter's Transcript filed.

June 24, 1958. Hearing to Settle Statement on Appeal and Reporter's transcript is set for July 2, 1958 at 9:30 A.M. in Div. 6.

Notices mailed with Affidavits of Service by Mail.

[fol. 39] Jul. 2, 1958. In the following case Helen Roberts Reporter is ordered to take down proceedings as provided by law.

Cause Called. Judge John G. Barnes presiding. Both

parties ready. People represented by Jack Scott (D.C.A.). Defendant not in court but represented by George A. P. Simmons.

Hearing on notice to Settle Statement on Appeal and Reporter's Transcript.

Stipulation by Counsel that Reporter's Transcript shall constitute the Statement on Appeal.

The Court does now Settle and allow the Foregoing Statement on Appeal and Reporter's Transcript and certifies that the same is a true and correct statement of the Proceedings had in the Above Entitled Action.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 40] [File endorsement omitted]

IN THE MUNICIPAL COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

CR. A: 3865

No. 81437

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MANUEL TALLEY, Defendant

NOTICE OF APPEAL AND STAY OF EXECUTION — Filed May 27, 1958

To the Clerk of the Above-named Court:

The defendant in the above-entitled cause hereby appeals to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles from the order of the above-entitled court made and entered on the 27 day of May 1958, denying defendant's motion for a new trial and from the final judgment

of conviction rendered and pronounced by the above-entitled court on the 27th day of May, 1958.

Dated: May 27, 1958.

Simmons & Simmons, by Herbert W. Simmons Jr., Attorney for Appellant.

STAY OF EXECUTION—Filed May 27, 1958

Execution of judgment and sentence in the above-entitled case is hereby stayed pending appeal.

John G. Barnes, Judge, Municipal Court.

Dated: May 27, 1958.

Bail is set for $10.00.

[fol. 41] [File endorsement omitted]

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CR. A: 3865

No. 81437

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

MANUEL TALLEY, Defendant and Appellant

GROUNDS OF APPEAL AND DESIGNATION OF RECORD REQUEST FOR PREPARATION OF REPORTERS TRANSCRIPT—Filed June 2, 1958

To the Honorable Municipal Court of Los Angeles Judicial District, to City Attorney, City of Los Angeles, and to County Clerk.

Whereas, the defendant, Manuel Talley, having on the 27th day of May, 1958, duly taken an appeal from the judgment therein entered in the above entitled court on the 27th day of May, 1958,

You and each of you, are hereby notified that said defendant, Manuel Talley, in the above entitled action now presents this, his statement of grounds of appeal and points upon which he relies upon appeal from the above entitled Court to the Superior Court of the State of California as follows, to wit:

1. That Section 2806 of the Municipal Code is unconstitutional in that said code section abridges defendant's freedom of speech and thus is in violation of the California State Law and the United States Federal Law as regards to freedom of speech.

2. That there is unequal enforcement of law in the [fol. 42] application of Section 2806 of the Municipal Code to this defendant. That on account and because of the unequal enforcement of the law as it pertains to this defendant, appellant has been deprived of his constitutional rights.

Defendant now designates what portions of the reporter's transcript are necessary to be transcribed to fairly present the points relied upon by the defendant.

1. All of the evidence received and taken down by the court reporter during the trial of the case, including all rulings and remarks of the court and objections made by either side during the course of the trial and the rulings and comments of the court thereon.

2. The proceedings heard at the time the defendant made his motion for a new trial and the rulings and comments of the court thereon.

3. The proceedings at the time the defendant took his appeal.

The defendant now asks that the court make an order for the transcription thereof and the defendant further asks that the clerk deliver to him within the time required by law a copy of the reporter's transcript, and also a copy of the transcript on appeal in said action.

Dated: June 2, 1958.

Simmons & Simmons, By Herbert W. Simmons, Jr., Attorneys for Defendant.

[fol. 43] The Court does now settle and allow the foregoing Statement on Appeal and Reporter's Transcript and

certifies that the same is a true and correct statement of the proceedings had in the above entitled action.

Dated: July 2, 1958.

John G. Barnes, Judge of the Municipal Court.

[fol. 44] Affidavit of Service by Mail.

(Omitted in Printing).

[fol. 44a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 45] [File endorsement omitted]

In the Appellate Department of the Superior Court
County of Los Angeles, State of California

Superior Court No. CR. A. 3865

Trial Court No. 81437

People of the State of California, Plaintiff and Respondent

vs.

Manuel D. Talley, Defendant and Appellant

Opinion—November 17, 1958

Appeal by defendant from order denying motion for new trial and judgment of the Municipal Court of the Los Angeles Judicial District, John G. Barnes, Judge. Affirmed.

For Appellant—Simmons & Simmons.

For Respondent—Roger Arnebergh, City Attorney, Philip E. Grey, Assistant City Attorney, William E. Doran, Deputy City Attorney.

Defendant was convicted of a misdemeanor, having violated the provisions of Los Angeles Municipal Ordinance No. 77,000, sec. 28.06, in that he distributed a handbill which

did not then and there have upon it the name and address of the person who printed, wrote, compiled or manufactured it, nor the same information as to the person who caused the same to be distributed, nor the true names and addresses of the owners, managers or agents of the fictitious person and club who sponsored the handbill. Defendant appeals from conviction on the ground that the ordinance violates U.S. Constitution, Amendments 14 and 1.

The appellate concedes that the decision in *People* v. [fol. 46] *Arnold* (1954), 127 Cal. App. 2d Supp. 844, disposes of his contentions adversely but asks reconsideration and reversal of the view there taken, submitting substantially the same brief that was then submitted to this Court. We adhere to the decision in the case of *People* v. *Arnold*, and the conviction of appellant must be affirmed.

The essence of the right of "free speech" is derived from the historical connotation of the phrase, not from giving uncontrolled effect to the adjective "free". It means essentially "freedom from censorship" or "prior restraints" which prevent free discussion, *Joseph Burstyn, Inc.* v. *Wilson* (1951), 343 U.S. 495, 503; *People ex rel Barton* v. *Amer. Autos Ins. Co.* (1955), 132 Cal. App. 2d 317, 326), and such "free discussion" historically had to do with political questions, or governmental action. *United States* v. *Dennis* (1950), 183 F. 2d 201, aff'd. *Dennis* v. *United States* (1950), 341 U.S. 494). It has never meant that a speaker was free from accountability for what is written or printed, except as otherwise provided by law, such as in the privilege afforded legislative or judicial proceedings.

The present ordinance places no restriction upon what can be said, who can say it, or where it can be said, or when it can be said. The requirement that the desired information be placed upon a handbill, does not serve in any way to restrict what may be said, except the purely speculative personal possibility that someone might hesitate to identify himself with his own statements therein contained.

It therefore would seem that the requirement is reasonably germane to the exercise of the police power since it provides a means of determining and securing respon-

sibility for what is said, for as stated in California Constitution Art. I sec. 9 (and in the constitutions of 43 other states) the right of "free speech" is accompanied by correlative responsibility for its abuse. It will not do to say that the right is abridged because the law [fol. 47] provides a means to fix responsibility for abuses.

The authority of legislature to impose such regulations has not been regarded to be inconsistent with civil liberties, but essential to their preservation. Where the restriction promotes the welfare and good order of all the citizens of the state, it cannot be disregarded by the attempted exercise of some civil right for which protection is claimed. (Cf. C. J. Hughes in *Cox v. State of New Hampshire* (1940), 312 U.S. 569, 574, 61 S. Ct. 762, 765, 85 L. ed. 1049). Precensorship of what is said would be unconstitutional. It is equally clear that a state may by general and nondiscriminatory legislation regulate the times, places and *manner* of speech upon a street which would include the distribution of written speech; and may in other respects safeguard the peace, good order, and comfort of the community, without thereby invading the liberties protected by the 14th Amendment. (*Cantwell v. State of Connecticut* (1939), 310 U.S. 296, 303-304, 60 S. Ct. 900, 903, 84 L. ed. 1213, 1214, by a unanimous court.)

In *Cocs, et Presidina Bishop, etc. v. Central Pacific Ry.* (1949), 90 Cal. App. 2d 636, appeal dismissed 338 U.S. 855, rehearing denied 338 U.S. 959, it was held that the ordinance of the City of Porterville restricting churches to zones other than the first residential zone was a law prohibiting the free exercise of religion, in violation of the 1st Amendment, as embraced in the 14th. In *American Communications Assn. v. Douds* (1949), 339 U.S. 382, 397-398, 70 S. Ct. 674, 683, 94 L. ed. 925), Chief Justice Vinson referred to the Court's action in the *Porterville* case, as an instance in which there was no unlawful restriction. "When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial . . ." As said by Mr. Justice Reed in *Jones v. City of Opelika* (1941), 316 U.S. 584, 593-594, 62 S. Ct. 1231, 1237, 86 L. ed. 1691, "One man, with [fol. 48] views contrary to the rest of his compatriots, is

entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

It is said, "whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attributes' of that liberty' . . . . While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people.' . . . The limits of this sovereign power must always be determined with appropriate regard to the particular subject of 'its exercise.' . . . 'The boundary at which the conflicting interest balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side' . . ." (Mr. Justice Frankfurter in *Carpenters & Joiners Union* v. *Ritter's Cafe* (1941), 315 U.S. 722, 726, 62 S. Ct. 807, 809, 86 L. ed. 1143, quoting from *Near* v. *State of Minnesota* (1930), 283 U.S. 697, 707, 708, 51 S. Ct. 625, 628, 75 L. ed. 1357).

The "points along the way" include *Schneider* v. *Irvington (Kim Young* v. *People of California)* (1939), 308 U.S. 147, 84 L. ed. 155, the statement relative to municipal power (84 L. ed. 160-161, 163, 165); *Niemotko* v. *Maryland* (1950), 340 U.S. 268, 272 et seq., Mr. Justice Frankfurter concurring opinion; *Dennis* v. *United States*, *supra*, 341 U.S. 494, 95 L. ed. 1137, 1160-1194; and *Thomas* v. *Collins* [fol. 49] (1944), 323 U.S. 516, 89 L. ed. 430, which is nearest to the question at bar. The analysis made in the minority opinion in *Thomas* v. *Collins* of the nature of 'pre-registration is akin to the present problem. No unconstitutional element was discerned. The majority opinion links the question of identification with the right of assembly and petition. The injunction against it, based upon the lack of registration, was there held to be a restraint on both speech and assembly. Such an issue is not involved

here.] Compare also, qualifications for registration as voters, *Franklin* v. *Harper*, 205 Ga. 779, 55 S.E. 2d 221, app. dis. 339 U.S. 946, 70 S. Ct. 804, 94 L. ed. 1361; upon acquittal, refusal to redeliver records made under requirement, of fingerprinting and photograph; cf. *State ex rel. Mavity* v. *Tyndall* (1947), 225 Ind. 260, 74 N.E. 2d 914, cert. den. 333 U.S. 834, 68 S. Ct. 669, 92 L. ed. 1118; regulation of posted prices (burden is upon assailant to show invalidity), *Merit Oil Co.* v. *Director of Division for Necessaries of Life*, 319 Mass. 301, 65 N.E. 2d 529; fingerprinting and photographing taxi drivers, *Norman* v. *City of Las Vegas* (1947), 64 Nev. 38, 177 P. 2d 442; vaccination as prerequisite to admission to school, *Sadlock* v. *Board of Education* (1948), 137 N.J.L. 85, 58 A. 2d 218.

In *People ex rel Bryant* v. *Zimmerman* (1928), 278 U.S. 63, 73 L. ed. 184, 62 A.L.R. 785, a statute of the State of New York was sustained which required an organization to file with state officials its constitution, etc., and a roster of its membership. *In National Association for the A.C.P.* v. *Alabama* (1958), —— U.S. ——, 2 L. ed. 2d 1488, such a requirement of disclosure was held violative of the constitutional freedoms, under the facts of the case, but the Court did not overrule the *Zimmerman* case. It seems accepted that the names of the officials or employees of the organization could be validly required. One can find no differences between organizations, except that was considered malignant, and the other benign, and the situa [fol. 50] tion out of which the latter case evolved perhaps led to the fear that disclosure was only sought as a prelude to the deprivation of other constitutional rights; not a speculative but an imminent deprivation.

As "points along the way", such cases give no adequate preview or prediction. The Constitutional restrictions are that no law shall be made "abridging the freedom of speech." No such freedom is abridged by the ordinance here in question. It has been urged in effect that not only the body of the constitutional provision but its spirit must be observed, if modern judicial trends are to be anticipated. A hundred years ago it was remarked, "Mr. Justice Daniel, of the Supreme Court of the United States, took occasion in a recent case, to disapprove of this course of reasoning, and relaxing something of the austere dignity of that au-

gust tribunal, remarked, that if the Judges were to adopt the notion that a law might be declared unconstitutional, because of its supposed repugnancy to the spirit of the Constitution, they ought to employ a rapping medium to procure authentic revelations from that spirit." (*Pattison v. Board of Supervisors* (1859), 13 Cal. 175, 182); to which Mr. Justice Wallace added, "The 'spirit of the Constitution,' . . . would partake too much of the personal spirit of the individual Judges chosen for the time being to interpret that instrument, and, chameleon-like, it would be apt to prove white, or gray, or red, or bluish, or bottle green, as the peculiar views of those having the spirit in their keeping might give it color . . ." (*S. & V. R. R. Co. v. City of Stockton* (1871), 41 Cal. 147, 162).

Counsel have been able to refer us to no authentic rapping medium to reveal where the present ordinance would be directed by the United States Supreme Court by the "points along the way." We are of the opinion that the effect upon freedom of speech is too indirect and insub-
[fol. 51] stantial, as involved in this case, to require us to hold the ordinance is unconventional.

By virtue of U.S. Constitution Art. VI, cl. 2, the Constitution of the United States and the laws made in pursuance thereof "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In our sphere, this is our direct command, no less than that resting upon the United States Supreme Court which has jurisdiction in all cases arising under the Constitution. (Art. III, sec. 2, cl. 1.)

Upon the precise question in issue, the United States Supreme Court has not spoken. Under the policy announced for itself, and rather generally followed, it has undertaken to reweigh and balance the public interest and private right in each case. In a sense, this policy can never be divorced from the accompanying facts, and they, rather than a touchstone of principle, have produced holdings which may be "points in the line" but these are accompanied often by polemical discussion by individual members of the divided court, out of which proponents and opponents alike may find comfort, or by which the "points in the line" are obscured as general guides for future action. The announced

policy of decision requires that a court place itself in the position of the local legislature in each case, in determining and weighing the public interest, which is at least as compelling as private right.' (Cf. Mr. Justice Frankfurter in *Dennis* v. *United States*, *supra*, 341 U.S. 494, 525 et seq.)

It is salutary and just rule that Courts in the first instance are entitled to rely upon the integrity of the legislative process and of the legislators, for they too, act under the injunctions of the federal constitution. (Constitution, Art. VI, cl. 3).

The wisdom of legislation is not a matter for the Courts, [fol. 52] unless on its face it is manifestly arbitrary or ultra vires. (*McCarthy* v. *City of Manhattan Beach* (1953), 41 Cal. 2d 879, 885-886). There is a presumption that the facts justify the classification of the activity concerned and that there has been a balancing of public and private interest. (*California Physicians' Service* v. *Garrison* (1946), 28 Cal. 2d 790, 803).

The burden is upon him who asserts the invalidity of the ordinance to show such an abuse of discretion on the part of the legislators as would justify the court concluding as a matter of law that the ordinance is unduly oppressive, in consideration of his constitutional rights, and not reasonably necessary to promote the general welfare of the community. (*Minney* v. *City of Azusa* (1958), 164 A.C.A. 12, 25; *Serve Yourself etc. Assn.* v. *Brack* (1952), 39 Cal. 2d 813, app. dis. 345 U.S. 980).

The presumption of the constitutional validity of a statute does not disappear when the statute is challenged as violative of the First Amendment but is merely balanced by it. When the legislative body finds a public interest which justifies the banishment of anonymity, the presumption arises again in full force. (Paraphrasing *National Maritime Union of America* v. *Herzog* (1948), 78 F. Supp. 146, 155, affirmed 334 U.S. 854, 68 S. Ct. 1529, 92 L. ed. 1776).

The presumption of reasonableness attends State action. (*Salsburg* v. *State of Maryland* (1953), 346 U.S. 545, 553, 74 S. Ct. 280, 98 L. ed. 281, 289).

Opposition between the 14th Amendment and the ordinance should be such that a judge feels a clear and strong conviction of their incompatibility before the ordinance is declared void. (*National Maritime Union* v. *Herzog*, *supra*; *Donna* v. *Watson* (1952), 114 Cal. App. 2d 491, 495, app.

dis. 346 U.S. 803; *People* v. *Marine Products Co.* (1947), 77 Cal. App. 2d Supp. 929).

The judges in *People* v. *Arnold* did not and we now do not, [fol. 53] have such a strong and clear conviction.

The judgment and order denying motion for new trial are affirmed.

Dated November 17, 1958.

David, Judge.

I CONCUR. We have no clear-cut decision by the U.S. Supreme Court on the supposed right to publish anonymously; two of their cases which may bear on the question are conflicting. See *New York ex rel Bryant* v. *Zimmerman* (1928), 278 U.S. 63, 73 L.Ed. 184, 62 A.L.R. 785, and *N.A.A.C.P.* v. *Alabama* (1958), U.S. , 2 L.ed. 2d 1488. The distinction which Mr. Justice Harlan draws between the two seems to be that the members of N.A.A.C.P. are good guys and the members of Ku Klux Klan are wicked men.

Swain, Judge.

I DISSENT. Several propositions with respect to the problem before us, seem to me to stand established beyond argument, and to recognize them is to narrow the field in which reasonable minds may take opposing positions. The first is that the freedom of the press, protected by the Fourteenth Amendment and by Section 9 of Art. I of our State Constitution, extends to the particular type of printed matter known as "handbills". It is so stated in *Lovell* v. *City of Griffin* (1938), 303 U.S. 444, 452, 82 L.ed. 949, 954; and in *Young* v. *People* (1939), 308 U.S. 146, 84 L.ed. 155, a provision of the Los Angeles Municipal Code (sec. 28.01) that then declared that "No person shall distribute any handbill . . . upon any street . . ." was held to be prohibited by the Fourteenth Amendment. See, further, *Jamison* v. *State of Texas* (1943), 318 U.S. 413, 87 L.ed. 869.

Then, too, the fact that the section immediately involved essays to prohibit the *distribution* of handbills, and not [fol. 54] their *publication*, will not serve to save it. (*Ex parte Jackson* (1878), 96 U.S. 727, 733, 24 L.ed. 877, 879; *Lovell* v. *Griffin*, *supra*, 303 U.S. 444, 452, 84 L.ed. 949, 954; *Young* v. *People*, *supra*, 308 U.S. 146, 84 L.ed. 155.)

Again, as the cases already cited clearly establish, the protection of the two constitutions is against adverse action by city legislative bodies as well as by state legislatures.

Lastly, a mere reading of the section of the Municipal Code in question makes it clear that its effect is to abridge the freedom of the press (forbidden by the Fourteenth Amendment, as interpreted in the United States Supreme Court cases already cited) and to "restrain and abridge" the "liberty of the press", expressly forbidden by section 9, Art. I. Note the opening words of Municipal Code section 28.06: "No person shall distribute any handbill in any place under any circumstances. . ." But for that which follows this would be an absolute prohibition. That which follows lifts the absolute prohibition, but only partially. Unless the name and address of the author, and of the one causing the distribution to be made, are given, there can be no distribution. The freedom of press is to that extent abridged.

Nor is this just a technical abridgement. It takes no vivid imagination to conjure up many a situation where one who sees an evil against which he would strike by written criticism, will refrain from doing so because of what he believes to be the sure consequences to himself or family if his name appears on the pamphlet. The right freely to use the printed word is not limited to those so moved that they will act regardless of consequences. The section just cannot be said not to abridge or restrict the right freely to use the press in order to present ideas.

It must be conceded, of course, that neither freedom of speech nor of the press is immune from every restriction. It [fol. 55] cannot be doubted that a city ordinance would escape the death penalty, imposed by the constitutions, that read: "No person shall paint any words upon the walls of any public building", and I am not overlooking the fact that the State Constitution, after declaring that "Every citizen may freely speak, write, and publish his sentiments on all subjects," added the words: "*being responsible for the abuse of that right*" before it ended the sentence with the prohibition: "and no law shall be passed to restrain or abridge the liberty of speech or of the press." The responsibility is *imposed* on him who exercises the right that is given. The section does not, as suggested in *People* v.

Arnold (1954), 127 Cal. App. 2d 844, 848, 273 Pac. 2d 711, 713-714, grant the right to those who *accept* the responsibility.

The purpose of the Municipal Code provision is fairly obvious; it is to make it easy for the state, or for any individual injured by a handbill, to pin the responsibility upon him who caused it to be made and distributed, by requiring him to leave a trail to his door. In order to accomplish this purpose in the relatively few instances where there has been an abuse of the right freely to communicate ideas by handbills, (and plainly defendant's handbill was not obscene, libelous, nor did it otherwise abuse the right), the Municipal Code would impose restraint upon all occasions where it is desired to use them. I remain convinced that this may not be done.

Bishop, Presiding Judge.

[fols. 56-62] [File endorsement omitted]

In the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles

Superior Court No. CR A 3865.

Trial Court No. 81437

On Appeal from the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California

People of the State of California, Plaintiff and Respondent,

vs.

Manuel D. Talley, Defendant and Appellant

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

Judgment—Filed November 17, 1958

It is Ordered and Adjudged that the judgment and order denying motion for new trial made and entered in the Municipal Court of the Los Angeles Judicial District,

County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed.

———, Judge.

I, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that the foregoing is a true copy of the —— original judgment entered by said Court in the above entitled cause on the —— day of ——, 19 , and now remaining of record in this Court.

Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by ——— , Deputy.

Witness my hand and seal of the Court, affixed this —— day of ——, 19 .

———

[fol. 63] Clerk's Certificate to foregoing transcript omitted in printing.

———

[fol. 64] Supreme Court of the United States, October Term, 1958

No. —

Manuel D. Talley, Petitioner

vs.

People of the State of California

Order Extending Time to File Petition for Writ of Certiorari—February 12, 1959

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 16, 1959.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of February, 1959.

[fol. 65] SUPREME COURT OF THE UNITED STATES

[Title omitted]

On petition for writ of Certiorari to the Appellate Department of the Superior Court of the State of California County of Los Angeles.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —June 29, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted and case transferred to the appellate docket as No. 1040.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1959.

Supreme Court of the United States

October Term, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

On Writ of Certiorari to the Appellate Department of the Superior Court, State of California, County of Los Angeles

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Court of the United States

October Term, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

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On Writ of Certiorari to the Appellate Department of the Superior Court, State of California, County of Los Angeles

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

Interest of the *Amicus*

The American Jewish Congress, a national organization founded in 1918, is a voluntary association of American Jews committed by its constitution to the dual and, for us, inseparable purposes of defending and extending democracy and preserving our Jewish heritage and its values. We

are convinced that the surest way to preserve our nation and our democracy is to guard jealously the liberties secured by our Constitution and Bill of Rights and to oppose any infringements upon those liberties not clearly necessitated by overriding interests.

Freedom of speech and freedom of the press are liberties that are basic to the maintenance and development of our democratic way of life. Punishment for the distribution of anonymous leaflets, which thereby inhibits the expression of ideas, is an encroachment on these essential freedoms. Believing that the ordinance involved in this case constitutes an infringement upon American liberties that cannot be justified as clearly necessitated by an overriding interest, we submit this brief *amicus curiae* with the consent of the parties.

Statement of the Case

This case arises from the judgment of the Appellate Department of the Superior Court of California, county of Los Angeles, sustaining the constitutionality of a city ordinance prohibiting the anonymous distribution of hand-bills.

On March 22, 1958, petitioner distributed a leaflet in front of the A & D Market in Los Angeles, urging that it be temporarily boycotted because it allegedly sold goods of manufacturers whose employment policies reflected racial discrimination (R. 4, 17-20). The masthead of the leaflet identified its sponsor as "National Consumer Mobilization" and gave the post office address and phone number thereof (R. 17). At the non-jury trial, petitioner was found guilty of violating section 28.06 of Municipal Ordinance No. 77,000 and fined $10 (R. 23). His motion for a new trial

was denied (R. 15). On appeal to the Appellate Department of the Superior Court of California the judgment of conviction and the order denying the motion for a new trial were affirmed (R. 34).

The Ordinance Involved

The ordinance of the City of Los Angeles, California, under which the petitioner was convicted is Section 28.06 of Municipal Ordinance No. 77,000. which provides as follows:

> 28.06—Hand-Bill. Name and address of manufacturer-distributor: no person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover, or the face thereof, the name and address of the following:
>
> (A) The person who printed, wrote, compiled or manufactured the same.
>
> (B) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon.

The Issue

The issue to which this brief is addressed is whether a municipal ordinance making punishable the distribution of anonymous hand-bills anywhere in the city limits constitutes unlawful state action in that such legislation abridges freedom of speech and press as protected by the First and Fourteenth Amendments.

Summary of Argument

I. The ordinance challenged here places a restraint on the exercise of a right protected by the First Amendment, as made applicable to the states by the Fourteenth. Hence, it cannot stand in the absence of a showing of a compelling subordinating interest.

II. The restraint of freedom of expression imposed by the ordinance is substantial. Anonymity is an aid to free expression, particularly needed by those who express unpopular opinions. The right of political privacy, of which anonymity is one aspect, has received constitutional protection.

III. No compelling countervailing interest of the state has been advanced to justify this restraint. Exposure is not an appropriate aim of state action.

IV. The fact that the ordinance has an unjustified restrictive effect on those who may seek to express unpopular views renders it void on its face.

ARGUMENT

POINT I

The ordinance challenged here must be tested against the preferred position given to freedom of speech under the Constitution.

The ordinance here challenged plainly places a restraint on the exercise of a right protected by the First Amendment, as made applicable to the states by the Fourteenth. It is an express limitation on the distribution of handbills "in any place under any circumstances." Violation of the ordinance is punishable by fine or imprisonment.

Distribution of "hand-bills" or leaflets is a classic mode of exercising freedom of speech and this Court has given full protection to these "historic weapons in the defense of liberty * * *" *Lovell* v. *Griffin*, 303 U.S. 444, 452 (1938); *Schneider* v. *Irvington*, 308 U.S. 147 (1939); *Jamison* v. *Texas*, 318 U. S. 413 (1943). The restraint imposed by the ordinance is avoided if the person exercising his constitutional right by distributing a leaflet places his name and address on what he distributes. If he does not do so, he is entirely barred from using this method of airing his views. The question, therefore, is whether this restraint on a form of expression is consistent with constitutional requirements.

We are dealing here with limitations on the *manner* of expression, as distinguished from limitations on the *content* of what may be said. Where such limitations are designed to achieve a proper governmental purpose, such as the health, comfort or privacy of the public or their protection against fraud and other misconduct, the courts must de-

termine whether the restraint is so essential to achievement of a proper purpose that the curtailment of a constitutional right is justified. See, e.g., *Schneider* v. *Irvington, supra; Thornhill* v. *Alabama*, 310 U.S. 88 (1940); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Martin* v. *Struthers*, 319 U.S. 141 (1943); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Kovacs* v. *Cooper*, 336 U.S. 77 (1949); *Breard* v. *Alexandria*, 341 U.S. 622 (1951). The late Professor Chafee cogently warned that, "It must never be forgotten that the balancing cannot be properly done unless all the interests involved are adequately ascertained * * *" Chafee, *Free Speech in the United States*, p. 43 (1946). It is a conspicuous feature of this case, as we show below, that the California court made no effort to perform this essential function.

Where, as here, the right to freedom of expression is limited, the "usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945). The right asserted by petitioner here is among "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society [and which therefore] come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Mr. Justice Frankfurter, concurring in *Kovacs* v. *Cooper, supra*, at 95. Freedom of the press lies "at the foundation of free government by free men. * * * In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public

convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *Irvington, supra,* at 161.

As this Court has most recently said of the related First Amendment freedom of association, curtailments must be "subject to the closest scrutiny" and the "subordinating interest of the State must be compelling." *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 461, 463 (1958). See also *Barenblatt* v. *United States*, 79 S. Ct. 1081, 1093 (1959).

The court below failed to apply this test. It assumed, without any evidence, that the City of Los Angeles had reasonable basis for adopting the challenged ordinance. Far from being "astute to examine the effect of the challenged legislation" (*Schneider* case, *supra*), it brushed aside, without any discussion, the claim that the ordinance substantially impaired freedom of speech. We submit that the judiciary, in performing its constitutional function, cannot treat limitations on democratic liberties so casually.

POINT II

The ordinance places a substantial restraint on freedom of expression.

Early in its opinion, the court below stated that the requirement that hand-bills carry the name of the distributor "does not serve in any way to restrict what may be said, except the purely speculative personal possibility that someone might hesitate to identify himself with his own statements therein contained" (R. 28). Thus, in a half-

sentence, the Court rejected the contention that freedom to speak and write without restraint on matters of public concern is or may be inhibited by a law that bars all anonymous expression in the form of leaflets. We submit that there is nothing "speculative" about this contention. It is amply supported by the history of political writing in this country.

A. The Place of Anonymity in a Democratic Society

To begin with, it should be recognized that there is nothing inherently wrong in desiring to keep one's name from the public. Anonymity may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters*, and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood" (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.*, pp. 43-100). In 1775, Thomas Paine used the signature "Humanus" in an article for the *Pennsylvania Journal;* after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense*, Paine replied under the name of "Forester" (*Id.*, p. 91). The *New Hampshire and*

Vermont Journal or Farmers Weekly Museum regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.*, p. 128).

The most famous of all American political writings, *The Federalist*, written by Alexander Hamilton, James Madison and John Jay, was published anonymously. Indeed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist*, Modern Library Edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name of "Cato." (See the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi.)

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the Supreme Court, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.

This practice is still used by public officials. *Foreign Affairs*, the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (Foreign Affairs, Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

The millions of Americans who are members of secret fraternal orders certainly believe firmly in their right to operate anonymously (Schlesinger, *Paths to the Present* 44 (1949)). Professor Schlesinger describes them as playing a "positive and continuing role in society" (*Id.*, p. 48).[1]

B. Anonymity as an Aid to Free Expression

In a number of ways modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Public opinion researchers similarly accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> "A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it."

[1] A vigorous warning against the growing tendency to limit privacy and force all our activities into the glare of government supervision and public inspection is made by Professor Lasswell, "The Threat to Privacy," in MacIver, ed., *Conflict of Loyalties* (1952), pp. 121-140.

That the loss of anonymity can have a serious effect on free expression of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research*, Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale," advises employers to place (pp. 223-4)

> "* * * emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee."

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

> "Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies."[2]

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the

[2] The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

Underlying all these practices, anonymous polls, letters to the editor and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment.

Conversely, it is apparent that a society in which citizens are not allowed to engage in political activity free of the watchful eye of the state would be intolerable. As George Orwell has shown in *Nineteen Eighty-Four*, such prying is consistent only with totalitarianism.

C. Secret Elections in Democracies

Anonymity, secrecy, privacy, however it may be called, thus has a special value in a democratic society. Nowhere is this seen better than in the act that symbolizes the unity of democratic government and its citizens, the election of public officers. It is not too much to say that that degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Mr. Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire*, 354 U.S. 234, 266 (1957):

> "In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major par-

> ties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888."

This right of "political privacy" (*id.* at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy*, through organizations as in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), or by an individual as in the present case.

D. Protection of Unpopular Opinion

The mantle of protection that the Constitution throws over the right to hold and espouse political, religious and other views is designed primarily for those who adhere to unpopular causes, those who advance the "opinions we loath." (Justice Holmes dissenting in *Abrams* v. *United States*, 250 U.S. 616, 630 (1919).) No bill of rights is needed to protect what is popular and conventional. Hence, when basic guarantees of the First Amendment are asserted, they must be interpreted in a manner that insures protection to the advocate of unpopular causes—the advocate who stands to be injured most by enforced disclosure of his identity.

This, we believe, is the principal thrust of this Court's recent decision in *NAACP* v. *Alabama*, *supra*. This Court was there concerned with the protection of those who hold "dissident beliefs" (357 U.S. at 462). Although the case involved exposure of organized activity, the reasoning ap-

plied equally to individual expression. Indeed, this Court expressly noted that, in asserting the right of anonymity, the Association "argues more appropriately the rights of its members" (*Id.* at 458).

The *NAACP* case established the importance of giving the full protection of the First Amendment guarantees to organized groups which may face hostility from the rest of the community. It is even more important, we believe, to protect the individual speaker against hostile measures. Petitioner here represents a class that is essential to the workings of democracy as envisaged in the Constitution. It is with the single, unsupported advocate, working without allies, that all movements begin. Just as "the longest journey starts with the first step," so the idea proclaimed by millions must first be voiced by a single individual. And it is while the idea is held only by one or a few persons that anonymity may make the difference between survival or immediate extinction. It is at this critical, formative stage that "forced revelations concerning matters that are unorthodox, unpopular, or even hateful to the general public * * * may be disastrous." *Watkins* v. *United States*, 354 U.S. 178, 197 (1957).

We submit, therefore, that the ordinance here challenged has an unquestionably inhibiting effect on freedom of expression, an effect which is by no means "speculative." Nor does it make any difference that this inhibiting effect will operate against only a small fraction of those who distribute hand-bills in Los Angeles. It is characteristic of restrictive laws in general and exposure laws in particular that they automatically seek out the unpopular group as their target. This was recognized by Circuit Judge Soper in *National Association for the Advancement of Colored*

People v. *Patty*, 159 F. Supp. 503 (D.C., E.D., Va., 1958), rev'd on other grounds *sub nom. Harrison* v. *NAACP*, 360 U.S. 167 (1959). The District Court there condemned a statute requiring submission of membership lists to the state. The requirement was directed, not to a specific organization as in *NAACP* v. *Alabama*, *supra*, but to a class of organizations which included the NAACP. Yet it was only the NAACP that resisted its application. Judge Soper said (159 F. Supp. at 526): "Registration of persons engaged in a popular cause imposes no hardship while, as the evidence in this case shows, registration of names of persons who resist the popular will would lead not only to expression of ill will and hostility but to the loss of members by plaintiff's Association."

The same selective effect is inherent in the ordinance involved here. Those who distribute leaflets containing innocuous or popular messages usually have no reason to conceal their names and will sign them even without legal compulsion. It is the advocate of dissident views who must often choose silence when the only alternative is exposure. The distributor of leaflets advertising a Democratic Party rally or a church supper need not fear that his name will be carefully noted and perhaps be made the subject of a savage editorial attack. He need not wonder whether he had prompted fanatics to burn crosses on his lawn or paint swastikas on his house.

The First Amendment rests on the assumption that the interests of the public as a whole require extending the guarantees of freedom of expression to the small fraction of the people who are moved from time to time to express new, usually unpopular views. The Bill of Rights is designed to shield the feeble spark of the untried idea from being quenched by a hostile flood of majority opinion.

POINT III

There is no compelling reason for legislative proscription of anonymity.

The Court below, which never considered the free speech interest to determine the harm done to it by the ordinance, gave but brief consideration to the other side of the coin. In support of the ordinance, it offered only the unadorned and unsupported statement that "the requirement is reasonably germane to the exercise of the police power since it provides a means of determining and securing responsibility for what is said" (R. 28-29).

Even an exercise of the police power, however, may go no further than plainly necessary to achieve its purpose when its effect is to curb First Amendment rights. The possibility that some leaflet or hand-bill may contain libelous matter does not automatically justify impairing freedom of speech by a sweeping prohibition of all anonymous hand-bills, at all times and places. Legislation limiting expression must at least be "narrowly drawn to cover the precise situation giving rise to the danger." *Thornhill v. Alabama*, 310 U. S. 88, 105 (1940).

There was plainly no need to prohibit distribution of the leaflet involved here in order to insure accountability for libel. The leaflet carried the name of an organization, a genuine address and a genuine telephone number. Any person libelled could have identified the distributor with little difficulty.

Moreover, even if it were true that allowing anonymous expression might sometimes make it more difficult for

defamed persons to obtain full justice, that would not be a conclusive factor, by itself, in favor of the ordinance. There are a number of respects in which the law places curbs on the full vindication of legal rights in order to protect other important public interests. Among these are the exclusion of relevant evidence in order to preserve valuable confidential relationships.[3] In the field of defamation, this Court has only recently reaffirmed the absolute privilege given to government officials in order to prevent restraint of their necessary activities.[4]

Beyond the one consideration of responsibility for libel mentioned by the court below, one can only speculate as to possible justifications for the ordinance. (None are offered in the Brief in Opposition to the Petition for Certiorari.) No such speculation should be demanded, however, where the burden is upon the state to show "compelling" reasons for its restrictive action (*supra*, Point I). Nevertheless, a few points may be mentioned.

First, it cannot be argued that denial of anonymity is a proper end in itself. In *Watkins* v. *United States*, *supra*, this Court said (354 U. S. at 187): "There is no general

[3] Wigmore, *Evidence*, Vol. 8, Chapters 81-87 (3d ed., 1940). Wigmore makes it plain that these exclusionary rules are direct impairments of the societal objective of justice based on the closest possible ascertainment of truth and that they are accepted only to attain other competing objectives (*Id.*, at pp. 64-67). One of these exclusionary rules, which bars questions to witnesses about their religious opinions, is designed at least in part to protect a First Amendment right (*Id.* at 162).

[4] *Barr* v. *Matteo*, 79 S. Ct. 1335 (1959); *Howard* v. *Lyons*, 79 S. Ct. 1331 (1959). It was held in *Barr* that "protection of the individual citizen against pecuniary damage caused by oppressive or malicious action on the part of officials of the Federal Government" must yield to "the protection of the public interest by shielding responsible governmental officers against the harassment and inevitable hazards of vindictive or ill-founded damage suits" (79 S. Ct. at 1336).

authority to expose the private affairs of individuals without justification in terms of the functions of Congress." This concept was reiterated in *Barenblatt* v. *United States*, *supra*, where this Court said (79 S. Ct. at 1093): "* * * Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a [valid legislative] purpose."[5] We submit that it is equally true that state and local governments have no power to compel exposure without justification in terms of their own functions. Exposure does not justify itself, particularly where its effect restrains freedom of expression.

Second, we concur in petitioner's argument that it is not an appropriate use of governmental powers to prohibit anonymity in order to enable readers to judge the motives and good faith of the writer. The anonymous writer pays a price for whatever advantage he gains by concealing his name. Most if not all his readers will count his secrecy against him in weighing what they read. On the other hand, it can be argued that anonymity contributes to rational appraisal of arguments since it reduces the element of personal bias. These and other competing factors are part of the free competition of ideas which the state may not constitutionally disturb by tilting the scales.

Finally, the state has not even borne the burden here of showing that anonymous leaflets are a significant factor

[5] In going on to reject the contention that the Congressional action there challenged was improper because its "true objective * * * was purely 'exposure,'" (79 S. Ct. at 1096), this Court held merely that it would not probe into hidden Congressional motives where a proper purpose for the Congressional action appeared. It thereby impliedly but necessarily assumed the principle that exposure cannot be offered by Congress as a justification in itself for legislative actions.

in Los Angeles, that they occur with any frequency or have caused any known difficulties. If anything in this case is "speculative," it is the conclusion that this ordinance is needed to deal with existing evils.

On the contrary, it seems likely that it is only rarely that leaflet distributors conceal their identity. However, the few cases where anonymity is exercised, as we have shown in Point II, are the very ones where the protections of the First Amendment are most needed.

POINT IV

The ordinance here challenged is void on its face.

In condemning an attempt to expose an organization's membership lists in *National Association for the Advancemen of Colored People* v. *Alabama*, 357 U. S. 449 (1957) this Court noted that there was evidence that, in the circumstances prevailing in Alabama, exposure would place adherents of the Association under severe pressure.[6] Although a parallel showing has been made by petitioner here, we do not rest the argument in this brief on that factor.

The Los Angeles ordinance, which applies to all expression in the form of leaflets, places a restraint on all such expression. While the restraint is negligible for most leaflet distributors, it is substantial for those who advocate unpopular causes, as we have shown in Point II. We

[6] It does not appear that this Court rested its decision on that evidence. Rather, the case stands for the principle that "* * * compelled disclosure of affiliation with groups engaged in advocacy may constitute * * * a restraint on freedom of association * * *." (357 U. S. at 462.)

believe that that is enough to condemn the ordinance on its face, and not merely as applied in this situation.

This is not a novel proposition. For example, laws that give too wide a power to a public official to grant or withhold licenses to speak or to publish exert their restrictive effect chiefly on groups that are in official disfavor. Yet this Court has condemned them *in toto* (*Kunz* v. *New York*, 340 U. S. 290 (1951)), going so far as to hold that they may be challenged without a showing that a license has been sought and denied. *Lovell* v. *Griffin*, 303 U. S. 444, 452-453 (1938). Similarly laws that lay taxes on religious advocacy restrain only the small groups that find them financially burdensome. Yet this Court has not limited its protection in such cases to those who cannot pay what is demanded. *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943).[7]

The Los Angeles ordinance here lays a restraint on a form of expression—leaflet distribution—which has a substantial restrictive effect when applied to unpopular groups. It is therefore unconstitutional on its face.

Conclusion

The ordinance here challenged places a restraint on the exercise of the right to freedom of expression, guaranteed against governmental interference by the First and Fourteenth Amendments to the United States Constitution. The restraint imposed is substantial. It weighs most

[7] In the *Murdock* case, a distinction was carefully drawn between the imposition of general taxes on religious groups and a tax which is a condition on the exercise of religious rights. If the latter were permitted, the Court said, the taxing authority could "close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy" (319 U. S. at 112).

heavily against the advocates of unpopular causes. The state has failed to show a "compelling" reason for its imposition.

We therefore urge this Court to reverse the decision below on the ground that the ordinance under which petitioner was convicted is unconstitutional on its face.

Respectfully submitted,

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October, 1959

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

ON A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PETITIONER'S OPENING BRIEF

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TOPICAL INDEX

Table of Authorities Cited

Cases:

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PETITIONER'S OPENING BRIEF

Opinion Below

The opinion of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles was by a divided court (2-1), Swain, *J.* concurring in a separate opinion [R. 34], and Bishop, *P.J.* dissenting in a separate opinion [R. 34-36]. Said opinions are reported in 332 P. 2d 447. The trial court rendered a brief oral opinion only [R. 14-15].

Jurisdiction

(a) Petitioner seeks review of the judgment of the Appellate Department of the Superior Court of the State of

California, in and for the County of Los Angeles, entered and filed on November 17, 1958 [R. 27, 34, 36]. Time to file a petition for writ of certiorari was extended to April 16, 1959, by order of Mr. Justice Douglas dated February 12, 1959.

The Appellate Department of the Superior Court is the highest state court available to petitioner (California Constitution, Article VI, Secs. 4(b) and 5; *People* v. *Reed*, 13 Cal. App. 2d 39, 56 P. 2d 240; *Alberts* v. *California*, 354 U.S. 476, 481, n. 6).

The order of this Court granting petitioner's petition for Writ of Certiorari and granting him leave to proceed *in forma pauperis* was made on June 29, 1959 [R. 38]. The case was docketed in this Court the same date [R. 38].

(b) Petitioner was found guilty [R. 15, 23] in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, under a one count complaint [R. 1], charging him with a violation of Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000). Upon the finding of guilt thereunder, petitioner was sentenced to pay a fine of ten dollars ($10.00), and in case of default in such payment, to be imprisoned in the City Jail of the City of Los Angeles at the rate of one day for each five dollars of said fine [R. 23].

Said complaint [R. 1] charged that on or about March 22, 1958, petitioner violated Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) in that he "did wilfully and unlawfully in the City of Los Angeles, distribute a handbill which did not then and there have printed on the cover and on the face thereof, the name and address of the person who printed, wrote, compiled or manufactured the said handbill, and the name of the person who caused the same to be distributed and the true names and ad-

dresses of the owners, managers or agents of the fictitious person and club which sponsored said handbill."

The constitutional validity of Section 28.06 of the Municipal Code of Los Angeles was drawn in question in the grounds of appeal [R. 25-26], and before the trial court [R. 14-15], on the ground that it abridged freedom of speech, on its face and as applied to petitioner, in violation of the First and Fourteenth Amendments to the United States Constitution, and upon the additional ground that it was repugnant to the equal protection and due process provisions of the Fourteenth Amendment.

The state court, in affirming the validity of Section 28.06, rejected petitioner's assertions that the ordinance was repugnant to the free speech provisions of the First and Fourteenth Amendments to the United States Constitution, Presiding Judge Bishop dissenting.

(c) This Court's jurisdiction to review the judgment is conferred by title 28, United States Code, Section 1257(3).

Constitutional Provisions and Statutes Involved

The pertinent provisions of the First and Fourteenth Amendments to the Constitution of the United States and Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) are set forth in Appendix "A" hereto.

Questions Presented

1. Whether the ordinance at bar, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000, by prohibiting the anonymous or pseudonymous publication, sponsorship and distribution of handbills *anywhere* in the City of Los Angeles at *any* time, under *any* circumstances, upon

its face and as construed and applied to petitioner, by the holdings of the courts below, and the prosecution thereunder of the petitioner in the instant case, arbitrarily deprives persons, including petitioner, of their liberty and property without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the ordinance in the instant case, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000 upon its face and as applied to, and construed as to petitioner, by the holdings and opinions of the courts below that Los Angeles may, in the exercise of its police power, compel the disclosure of the identities and addresses of the author, publisher and distributor of a handbill as a condition for its publication and circulation, abridges freedom of speech and press guaranteed by the provisions of the First and Fourteenth Amendments to the United States Constitution.

3. Whether the ordinance at bar, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000, upon its face, and as construed and applied to petitioner, by proscribing the anonymous and pseudonymous publication and circulation of handbills only, without including within the proscription books, magazines and newspapers, arbitrarily denies petitioner equal protection of the laws in violation of the Due Process and Equal Protection provisions of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

(a) The case against petitioner was as follows: The Deputy City Prosecutor and Counsel for the petitioner stipulated to the following facts: That petitioner was distribut-

ing handbills on March 22, 1958, at 55th and Holmes Avenue, in the City of Los Angeles [R. 3-4]; that the arresting officer, Sergeant McClennon, and three other witnesses received handbills distributed by petitioner on that day and at that place [R. 4]; and that two such handbills so distributed by petitioner [R. 17-20] be received into evidence [R. 4]. Said two handbills were thereupon received into evidence by the court as one Exhibit, People's Exhibit 1 [R. 4], and the People rested its case.

The petitioner called three witnesses to the stand in an effort to show that said ordinance was being enforced unequally as to him. The first witness, Mr. Earl Lacour, an employee of the A and D Market, located at 5501 Holmes Avenue [R. 5], was shown a document which he identified as an advertisement of food sales at the A and D Market [R. 6], and testified that the Market had distributed similar handbills on the public streets of Los Angeles every weekend [R. 6], and, to his knowledge, the Market had never been prosecuted therefor [R. 7]. Thereafter, said advertisement was offered and received into evidence as defendant's Exhibit A [R. 7].

On cross examination, the witness testified that the A and D Market had not manufactured or circulated Exhibit A [R. 7-8].

Petitioner then took the stand and testified in his own behalf to the effect that he had not seen Exhibit A posted on the door of the A and D Market [R. 9] until *after* his arrest on March 22, 1959 and such handbills as Exhibit A contained no identification or address of the writer, compiler or manufacturer thereof [R. 9]. The Deputy City Attorney and petitioner's Counsel then stipulated between them that the A and D Market, a supermarket, was a fictitious name [R. 10].

Petitioner was then shown a document which he identified as another handbill advertising a food sale at the A and D Super-Market, 55th and Holmes [R. 10], and which, according to petitioner's testimony, bore a change in the format in that it contained the identity of the printer [R. 10]. Said document was thereupon offered and received into evidence as defendant's Exhibit "B" [R. 11]. Both Exhibits "A" and "B" are contained in the Record at bar, at pages 20A and 20B.

On cross examination, petitioner further testified that he had received Exhibit B "from a person living in the community" who stated that he found it on his gate [R. 11]. On redirect, petitioner amplified his previous testimony by stating that the house to which Exhibit B had been delivered was on a public thoroughfare [R. 12].

A third witness called by petitioner was excused after identifying himself and denying past or present employment by the A and D Market [R. 12].

Mr. Lacour was then recalled to the stand by petitioner, but testified that he did not know whether or not A and D Market was incorporated [R. 13].

(b) The trial court held the "defense of unconstitutionality based upon lack of uniform enforcement" fell short of proof, and concluded from the evidence that the petitioner had violated the ordinance [R. 14]. The trial judge felt that he could not hold the ordinance an unconstitutional abridgment of free speech in that he was bound by the opinion of the Appellate Department which had ruled adversely to that contention in *People* v. *Arnold*, 127 Cal. App. 2d Supp. 844, 273 P. 2d 711 [R. 15].

A motion for new trial was made by petitioner on the grounds of unconstitutionality and unequal enforcement of the laws, which motion was denied [R. 15].

The Appellate Department reaffirmed its decision in the *Arnold* case, *supra*, holding that the ordinance was not violative of the Free Speech and Due Process Clauses of the First and Fourteenth Amendments to the United States Constitution.

The court hold that the ordinance placed no restriction on speech, and that the contention that someone might hesitate to speak if he was required to identify himself was too speculative a possibility to warrant holding the ordinance unconstitutional [R. 28]. The majority believed the requirement of disclosure was germane to the police power because "The right of 'free speech' is accompanied by correlative responsibility for its abuse" [R. 28-29]. The majority reviewed the decisions of this court, but found no "authentic rapping medium" from any of them which would control a determination of the constitutionality of the ordinance at bar [R. 32]. Judge David, writing for the Court, was unable to distinguish *People ex rel. Bryant* v. *Zimmerman* (278 U.S. 62) from *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, "Except that [one organization] was considered malignant, and the other benign," and that "disclosure was only sought as a prelude to the deprivation of other constitutional rights; not a speculative but an imminent deprivation." [R. 31]. Judge Swain, concurring, found "The distinction which Mr. Justice Harlan draws between the two seems to be that the members of N.A.A.C.P. are good guys and the members of Ku Klux Klan are wicked men." [R. 34]

The court's approach to the Free Speech and Due Process issues of the case was that a presumption of reasonableness and constitutionality attended every statute [R. 33] which presumption did not disappear when the ordinance was challenged as violative of the First Amendment "but is merely balanced by it" [R. 33]. The majority thought

it would require "a clear and strong conviction" of incompatibility between the ordinance and the Fourteenth Amendment before the former could be declared void [R. 33].

The court held the ordinance at bar, on its face and as applied and construed, was not repugnant to the First and Fourteenth Amendments to the United States Constitution [R. 27-34].

Bishop, *P.J.* dissenting found the ordinance, on its face and as applied to petitioner, too broad, and an abridgment of freedom of speech and press as guaranteed by the First and Fourteenth Amendment to the Constitution of the United States [R. 34-36]. The dissenting judge rejected the notion that public policy required sustaining the ordinance, stating in his opinion:

> "The purpose of the Municipal Code provision is fairly obvious; it is to make it easy for the state, or for any individual injured by a handbill, to pin the responsibility upon him who caused it to be made and distributed, by requiring him to leave a trail to his door. In order to accomplish this purpose in the relatively few instances where there has been an abuse of the right freely to communicate ideas by handbills, (and plainly defendant's handbill was not obscene, libelous, nor did it otherwise abuse the right), the Municipal Code would impose restraint upon all occasions where it is desired to use them. I remain convinced that this may not be done."

ARGUMENT

Summary of Argument

1. The ordinance at bar, in forbidding the circulation of anonymous or pseudonymous handbills anywhere in the City of Los Angeles, under any circumstances, and irrespective of tone or content, is so broad that, on its face and as construed and applied to petitioner, it sweeps away freedom of speech and press as protected by the First Amendment speaking through the Fourteenth Amendment to the United States Constitution.

The majority of the Appellate Department treated the ordinance as presumptively valid, and argued that the free speech provisions of the First Amendment to the Federal Constitution merely *balanced* the presumption. If a legislature, operating under political, rather than judicial considerations, could thus determine the scope of a citizen's speech rights, then unpopular or even controversial ideas could be placed under legislative ban.

The Fourteenth Amendment, however, prohibits the state from interfering with or abridging the First Amendment liberties of its citizens unless a paramount societal interest compels the infringement. Even then, however, the regulation must be narrowly drawn to fit the intended evil, so that lawful speech will not be impaired.

The ordinance at bar is aimed at detecting and securing responsibility of those who abuse their speech rights. Of these there could be but a few, while the vast majority of writers or publishers who do not are nonetheless required to put their names to what they write. For a Negro like petitioner this could be a dangerous requirement, for although Los Angeles is not Little Rock, there is unfortu-

nately considerable racial tension and violence in the community.

The career of anonymity is a long and honorable one in our own history, no less than in Europe's. Indeed, it still serves a useful purpose, particularly as a means of encouraging the communication of ideas. This Court has recognized its importance when it refused, in *N.A.A.C.P.* v. *Alabama* (357 U.S. 449) to compel the disclosure of that organization's membership list to state officials.

If free men have the right to hold and express lawful ideas, they must also have the right to circulate such ideas upon terms they think best. It is not for the state to substitute its judgment for that of the writer or publisher. Such is the essence of liberty, and such be its conditions. The ordinance at bar does just that, and more: It puts the advocate of ideas under surveillance as well as to restrain his speech. This may not be the intention of the ordinance, but therein lies its defect and its vice. The ordinance is not drawn to fit the evil, but rather to suit the convenience of its administrators. Mere convenience, however, cannot be used as a bootstrap to constitutionality. There is just no pressing public interest in convenience which can be said to overcome the public interest in the free flow of information.

The ordinance is bad because it goes too far. It prohibits even lawful speech from being disseminated anonymously, and indeed, prohibits its distribution whether in a church, a private dwelling or a grocery store.

As applied to petitioner, the ordinance is revealed in its most ominous tendencies. For in reaching petitioner's tract, it arrested the distribution of speech advocating the abolition of racial discrimination in employment. As the dissent pointed out in the court below, petitioner's pamphlet was

"plainly . . . not obscene; libelous, nor did it otherwise abuse the right" [R. 36]. Why then prevent its dissemination, unless opposed to its message?

Obviously, the ordinance on its face and as construed and applied to petitioner abridges freedom of speech and press, arbitrarily restricts the circulation of ideas freely within the community, and transgresses on privacy. The ordinance thus deprives petitioner of his liberty and property without due process of law in violation of the First and Fourteenth Amendments.

2. The Fourteenth Amendment to the Federal Constitution also guarantees equal protection of the laws. This does not mean that things unequal in fact are to be treated equal in law; but rather that persons in similar circumstances must be similarly treated.

The ordinance does not do this. Though its purpose is to expose and secure responsibility for unlawful speech appearing in handbills, the latter is no less a means of communication than the book or periodical. The pamphlet contains no greater capacity for abuse than any other form of communication unless it is contended that its relatively lower cost renders it, somehow, a more dangerous instrumentality. Such assumption is obviously untrue, and besides, one's right to protection of the First Amendment cannot be conditioned on the size of his pocketbook.

The curious fact is, however, that the ordinance disfavors the *lawful* speech of the anonymous pamphleteer, while ignoring the commercial, though *unlawful*, speech of the anonymous writer and publisher of books.

Moreover, the ordinance withholds the protection of First Amendment freedoms from the *lawful* speech of the anonymous writer and distributor of handbills, while leaving

those who anonymously put the *same* speech into a book or magazine to remain protected under the First Amendment.

Manifestly, the ordinance bears no reasonable relation to its purpose, and constitutes an arbitrary deprivation of liberty and property without due process of law, and denies equal protection of the laws in contravention of the First and Fourteenth Amendments to the United States Constitution.

I

The Ordinance at Bar Is Void on Its Face and as Applied Because So Broad as to Abridge First Amendment Liberties as Protected by the Fourteenth Amendment to the Federal Constitution.

A. *The Distribution of Anonymous Leaflets Is Protected from State Action by the First Amendment to the United States Constitution, Speaking Through the Fourteenth.*

The First Amendment to the Federal Constitution provides in pertinent part, as follows:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

Speech and press which is protected by the First Amendment is likewise protected from state action by the Fourteenth Amendment (*Kingsley International Pictures* v. *Board of Regents*, 360 U.S. 684; *Staub* v. *City of Baxley*, 355 U.S. 317; *Lovell* v. *City of Griffin*, 303 U.S. 444). Municipal ordinances adopted under authority of the State constitutes state action (*Staub* v. *City of Baxley, supra*; *Lovell* v. *City of Griffin, supra*).

The ordinance at bar[1] forbids all speech disseminated anonymously by handbill[2] under *any* circumstances *anywhere* in the City of Los Angeles.[3] Its object, as reflected by the judicial gloss given by the Appellate Department, is to "leave a trail" to the door of those who utter libelous or obscene statements.[4] On the other hand, petitioner's conviction thereunder was for distribution of pseudonymous leaflets advocating boycott of a store whose owner refused to cooperate in a program designed to end racially discriminatory employment practices.[5] Thus, petitioner is being punished not for what he said, but because he said it under a fictitious name; and for speech clearly not punishable,[6] or even within the intendment of the ordinance.

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[1] See Appendix "A."

[2] Sec. 28.00 of the Los Angeles Municipal Code defines "handbill" as follows:

> "'HANDBILL' shall mean any handbill, dodges, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter calculated to attract attention of the public."

[3] The City of Los Angeles has a population of 2,243,901 (source: 1959 World Almanac, published by New York World-Telegram), spread over some 453.47 square miles (source: p. 398, Vol. 14, Encyclopaedia Britannica). Within its perimeter are many incorporated municipalities in whose jurisdictions the ordinance would not apply.

[4] See: dissenting opinion of Judge Bishop, at R. 36; and majority opinion of Judge David, at R. 28-29. See also: *People* v. *Arnold* (1954), 127 Cal. App. 2d Supp. 844, 273 P. 2d 711.

[5] People's Exhibit No. 1, at R. 17-20.

[6] See: Dissenting opinion of Bishop, P.J. at R. 36.
Since appellant's conviction the California Legislature has enacted a Fair Employment Practices Act; An Act to add Part 4.5 (commencing with Section 1410) to Division 2 of, and to amend Section 56 of, the California Labor Code (West's California Legislative Service (1959) No. 3, p. 193, et seq.). Moreover, in December, 1959, the Los Angeles County Board of Supervisors made a finding

> "That prejudice, intolerance and discrimination against any individual or group because of race, religion, national origin

That the First Amendment guarantees of free speech and press extend to handbills has long and often been recognized by this Court (*Lovell* v. *City of Griffin*, 303 U.S. 444; *Schneider* v. *Irvington*, 308 U.S. 147; *Jamison* v. *Texas*, 318 U.S. 413; *Martin* v. *Struthers*, 319 U.S. 141; compare: *Marsh* v. *Alabama*, 326 U.S. 501; *Tucker* v. *Texas*, 326 U.S. 517).

Furthermore, those guarantees not only secure the publication of leaflets, but their distribution as well (*Lovell* v. *Griffin*, *supra*, p. 452; *Martin* v. *Struthers*, *supra*).

> "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." [*Ex Parte Jackson*, 96 U.S. 727, 733]

These decisions accept free speech and press as more than personal rights; that, in fact, democracy, by definition, is absolutely dependent upon them (*Grosjean* v. *American Press Co.*, 297 U.S. 233, 250). The wisdom and success with which a people govern themselves turn in a very real sense on the accessibility of ideas, and the liberty to debate them. Although the struggle for freedom has been constricted into a history lesson, the preservation of its ideals is a mandate for peaceful reform (*DeJonge* v. *Oregon*, 299 U.S. 353, 365). Hence, the need to acquire information commands a substantial public interest in making secure the routes by which it travels—however humble or limited. It follows that the state may not itself obstruct the channels of communica-

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or cultural background promote tension and conflict; that such prejudice, discrimination, tension and conflict are, therefore, a menace to peace and public welfare . . ." Ordinance No. 7425, dated December 13, 1959, Administrative Code of Los Angeles County.

The text of this ordinance is being lodged with the Clerk of this Court for the convenience of the court.

tion in an effort to safeguard them from abuse by others (Compare: *Saia* v. *New York*, 334 U.S. 558 at 561).

But no less fundamental to a free society is the right of privacy (*American Communications Ass'n* v. *Douds*, 339 U.S. 382, 402; concurring opinion *Sweezey* v. *New Hampshire*, 354 U.S. 234, 265; concurring opinion, *Rumely* v. *United States*, 345 U.S. 41, 57). If government is forbidden from conducting an arbitrary search of one's home and papers (*Johnson* v. *United States*, 333 U.S. 10), it is prohibited from prying into his conscience at all (*West Virginia State Board of Education* v. *Barnette*, 318 U.S. 624, 636; *United States* v. *Ballard*, 322 U.S. 78, 86-87). Even when authorized, a search must be confined to the matter which prompted it (*United States* v. *Rabinowitz*, 339 U.S. 56, 64, fn. 6; *United States* v. *Lefkowitz*, 285 U.S. 452; *Go-Bart Co.* v. *United States*, 282 U.S. 344). So here, the power to seek out and punish the libeler and the pornographer cannot be expanded into a general right to snoop (*Watkins* v. *United States*, 354 U.S. 178, 200; cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449). For free speech guarantees are meaningless when the speaker and his audience believe they are under official surveillance. Thus, the public has a vested interest in maintaining an independence and integrity of thought, as well as the public expression of it. That interest naturally is jeopardized whenever the state exhibits too great a concern in what is said, and who has said it.

The right of privacy and speech is not absolute, of course, but must be carefully balanced against other public interests pressing for supremacy. The problem is in deciding what weights to place on the weighing pans. While the Appellate Department groped for an "authentic rapping medium" (R. 32) with which to resolve the question (R. 30-32), it is obvious that the court's failure to find one was

attributable to a cavalier acceptance of whatever the Municipal Legislature offered as the more substantial interest. The fact that petitioner's fundamental rights are to be weighed against a public interest declared by a legislative body to be substantial does not, as the court below thought (R. 32), elevate the latter to a primary position, or even signify their equality. The dimension and appeal of petitioner's ideas do not enjoy constitutional protection only when it suits the legislature. On the contrary, petitioner's right to speak was as broad and long as the street on which he uttered it (*Jamison* v. *Texas*, 318 U.S. 413, 415-416; *Schneider* v. *Irvington*, 308 U.S. 147, 160); as substantial as the color of his skin appeared to those who thought it important (*National Association for Advancement of Colored People* v. *Alabama*, 357 U.S. 449); as impressive as the listener chose to treat it (Compare: *Martin* v. *Struthers*, 319 U.S. 141, 148). To equate his liberty of speech with a legislative justification for abridging it is to submit the basic rights of free men to legislative whim. Manifestly, freedoms guaranteed by the First Amendment are neither debatable, nor subject to vote (*West Virginia Board of Education* v. *Barnette*, *supra*, at p. 638). Thus, while freedom of speech, press and privacy may not be absolute, neither will they give way to a competing interest served up simply on a presumption of reasonableness (see: concurring opinion, *Sweezey* v. *New Hampshire*, *supra*, at p. 265; *Speiser* v. *Randall*, 357 U.S. 513). The fact is, the primary base of First Amendment freedoms is that it is essential to ordered liberty, not only because constitutionally protected, but because they are the *raison d'etre* of a free society. A competing public interest must therefore come equipped with clear and convincing evidence that its claims for supremacy are urgent, substantial and relevant (*N.A.A.C.P.* v. *Alabama*, *supra*, at pp. 465-466; concurring

opinion, *Sweezey* v. *New Hampshire*, at p. 265; *Thomas* v. *Collins*, 323 U.S. 516). Whether or not it does is ultimately for the courts (*Thomas* v. *Collins*, 323 U.S. 516, 529; *Cantwell* v. *Connecticut*, 310 U.S. 296, 307). So will the channels of communication be best protected from expedient political judgment, while affording fair notice of the constitutional limits which government may reach in its eternal campaign to remedy mischief.

Tested by the foregoing principles it is clear that the ordinance at bar must bow to liberty. The public interest in securing the responsibility of a few pornographers and libelers seems even less compelling than keeping the streets clean (*Schneider* v. *Irvington*, 308 U.S. 147; *Lovell* v. *Griffin*, 303 U.S. 444), or preserving the peaceful slumber of defense workers (*Martin* v. *Struthers*, 319 U.S. 141), or guarding the pocketbooks of citizens from fraudulent solicitation (*Staub* v. *City of Baxley*, 355 U.S. 313; *Thomas* v. *Collins*, 323 U.S. 516). Yet, in all these cases, the public interest underlying the ordinance was deemed subservient to the liberty which it was abridging.

In contrast, however, anonymity comes to this Court with an impressive history, and a vital, practical currency.

The origins of anonymity are vague, although it is interesting to find early Protestant leaders, such as Erasmus and Luther, casting grave doubts on the authorship—and hence the authenticity—of some biblical writings.[7] Considering the severe penalties[8] for heresy during the religious controversies of the Renaissance and Reformation, it sur-

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[7] Taylor and Mosher, *The Bibliographical History of Anonyma and Pseudonyma*, Univ. of Chicago Press (1951), at p. 32.

[8] Sentences ranged from penances and fasting to torture and death by fire or strangulation; and for the more serious offenses confiscation of property which was then divided between secular authorities and the church. Pfeffer, *Church, State and Freedom*, p. 19.

prises no one to discover at least three out of four critics of Church doctrine were anonymous.[9] At first, it was the Protestant scholar who invoked anonymity in order to conduct searching inquiry into the authorities on which the medieval church deposited its doctrines. Church ecclesiastics met this practice by compiling and condemning as blasphemous all suspected pseudepigrapha (i.e. spurious religious writings masquerading under forged or falsely claimed authorship). Soon, one Thomas James published his "Bastardie of the False Fathers", wherein he attempted to show how the church authorities had themselves relied on works which they had suspected and denounced.[10]

Once Protestantism had gained acceptance, however, its leaders promptly condemned hemenism (i.e. anonymously written heresy) as a sin. Even so, an eminent Lutheran theologian complained that these heretics were escaping punishment:

> "For if the authorities would punish them, they say that they did not do it because their names do not stand before such writings. So they contradict everybody."[11]

Not unnaturally, this ecclesiastic overlooked the fact that Martin Luther had himself attacked Church orthodoxy under the name Fridericus Fregosus, and that Calvin had written his heresies as Alcumius Lucianus, when both were still struggling to win converts to Protestantism.[12]

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[9] Taylor and Mosher, ibid, p. 187.

[10] Taylor and Mosher, ibid, at pp. 51-52.

[11] Attributed to Johan Wigand (1523-87), who likened hemenists to "'an army of grasshoppers who undertake to darken the rays of the sun.'" Taylor and Mosher, ibid, p. 92.

[12] Taylor and Mosher, ibid, at p. 86.

By the turn of the 18th Century, some 6,000 anonymous and pseudonymous works had been chronicled, although not all of them were involved in religious controversy.[13]

Today, however, when non-conformity is punished essentially by job loss and public obloquy,[14] rather than by the rack and screw, heretical writers have sometimes resorted to pseudonym in order to earn a livelihood.[15]

Anonymity is sometimes used to open minds which are closed even when ecclesiastical and political authority are not standing guard over them. In 1869, for example, a scholar was able to compile a bibliography devoted to the identification of authors who had written under titles of nobility that did not belong to them.[16] And when the world

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[13] Taylor and Mosher, ibid. at p. 132. That figure must certainly have been enlarged in the ensuing one hundred years, since Voltaire was but one of approximately 160 names used by that famous political essayist (Taylor and Mosher, ibid. at p. 134). Moreover, Romanized pseudonyms were extremely popular in the formative years of the American Republic. Daniel Leonard set forth his opposition to the Revolution as "Massachusettensis," and John Adams replied as "Novangalus." Later, Hamilton, Madison and Jay penned the Federalist papers under the name Publicus, which prompted New York's Governor, George Clinton, to answer as "Cato." (Coker, *Democracy, Liberty and Property* (1948) MacMillan Press, p. 118.)

[14] See: John Cogley, Report on Blacklisting, Vol. I, at pp. 146, 131-143, 149; Vol. II, pp. 168, 173-191. This study, published in 1956 by The Fund for The Republic, recounts, *inter alia*, the employment difficulties in the Motion Picture, Television and Radio industries, of actors, writers and others associated with unpopular causes. Significantly Mr. Cogley deemed it necessary to withhold the names of some of the persons whose blacklisting experiences he records.

[15] The practice of blacklisting in the motion picture industry came up with a Rabelaisian twist when it developed that one Robert Rich, who, in 1956, was presented with an academy award for his screen play "The Brave One," was none other than Dalton Trumbo, a blacklisted screen writer (Los Angeles Times, Jan. 17, 1959, Part I, at p. 3).

[16] Quérard, *Les Supercheries*, Vol. I, Cols. 118-34; from Taylor and Mosher, ibid. at p. 179.

was still considered exclusively man's, George Eliot, John Oliver Hobbs and George Sand successfully advanced their cause, or their talents, under male pseudonyms.[17]

Indeed, the pseudonym "National Consumers Mobilization," appearing on the leaflets at bar [R. 17, 19], may well have been designed to impute wide support and prestige to ideas which had neither.

Fear of disgrace or embarrassment probably accounts for the reason why over 1,000 works have been signed "By a Lady";[18] and why the eminent mathematician and clergyman, Rev. Dr. Charles Lutwidge Dodgson, gave to the world's children Alice in Wonderland as Lewis Carroll.[19]

On the other hand, there are some who seek to persuade by force of the idea, rather than by the reputation of its proponent. Izaak Walton published his first edition of "*The Compleat Angler*" anonymously for just such reason.[20]

The social importance of anonymity in American life is signified by its current popularity among even the most respected authorities. The influential periodical, "Foreign Affairs" frequently carries pseudonymous essays on international policy, not the least of which was the famous "X"

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[17] Halkett & Laing, *Dictionary of Anonymous and Pseudonymous English Literature* (1926), Vol. I, at p. xiii. Taylor & Mosher, ibid, at p. 179.

[18] Encyclopaedia Britannica (1957), Vol. 2

[19] A pseudonym devised, incidentally, by a complex mathematical inversion of his true name, Halkett and Laing, ibid, at p. xiv.

[20] Taylor and Mosher, ibid, at p. 82.

The weekly journal MANAS, published anonymously out of Los Angeles, California, and sent to subscribers throughout the world, contains on page 4 of each edition the following explanation:

"Editorial articles are unsigned, since MANAS wishes to present ideas and view points, not personalities.

The Publishers"

A copy of MANAS is herewith lodged with the Clerk for the Court's convenience.

article, "*The Sources of Soviet Conduct*," which formulated United States policy toward the Soviet Union.[21]

Recognition that some ideas are more freely enunciated when the author's identity is withheld is reflected by the prevalence of initialed letters to the editor, the secret ballot and the weighty pronouncements of that oft-quoted government official, "Reliable Source".

But anonymity is perhaps never so important as when protecting those who advocate social reform. As one thoughtful writer points out, the really significant ideas are often unpopular at first, and therefore need to be nurtured in darkness until strong enough to compete in the market place.[22] People usually resent change, and greet it only with hostile reluctance. For this reason, ideas which tamper with deep-rooted prejudices may expect to encounter serious—and even violent—opposition.[23] The simplest way to discourage such opinions, therefore, is to expose their proponents to a resentful community. Such is the case here:

At the time of petitioner's conviction, California had no law prohibiting racial discrimination in employment, and occasional efforts to enact one had been unsuccessful. This did not mean that California had no race relations prob-

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[21] Robison, *Protection from Compulsory Disclosure of Membership*, 58 Columbia L.R. 614, 633.

[22] Robison, ibid, p. 633.

[23] The trade union movement, particularly in formative periods, has frequently found it necessary to conceal its membership lists from the prying eyes of labor spies and unsympathetic employers. Such practice has not only been recognized, but is approved, by the National Labor Relations Board (*Matter of McLachlan & Co.*, 45 NLRB 1113, 11-20-1121; *Matter of Revlon Products Co.*, 48 NLRB 1202, 1207-09; *Matter of Peter J. Schweitzer, Inc.*, 54 NLRB 813, 818), and by the courts see, *Warehouse & Cold Storage Co.* v. *NLRB*, 136 F. 2d 828 (9th CCA); *Kansas City Power and Light Co.* v. *NLRB*, 111 F. 2d 340, 349; *Local 309, etc.* v. *Gates*, 75 F. Supp. 620.

lems, but rather left them to be resolved by persuasion and voluntary cooperation. Petitioner was doing no more than this at the time of his arrest; but he did so against a background of racial tension and violence.

California is not Alabama, nor is Los Angeles a Little Rock. But racial hate and prejudice does not disappear simply because not legalized by statute. The Mason-Dixon line is a mere boundary separating states having bigoted laws from bigoted states of mind. Cross-burnings, race riots and segregated living are the progeny of fear and insecurity—immigrating from places where ignorance is bliss;[24] breeding wherever the status is quo.[25]

To say that since 1943, Los Angeles has been, and still is, a nidus of racial strife and tension is to say only what has been admitted by the Los Angeles County Board of Supervisors,[26] and reported by its agencies[27] and by the local press.[28] Having said this, however, is only to acknowledge

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[24] Memorandum on Minority Groups in Los Angeles County, of the Los Angeles County Commission on Human Relations, dated January 19, 1959 (Revised) at page 2. A copy of said Memorandum is being lodged herewith with the Clerk of this Court for the Court's convenience; also lodged herewith are other documents to be referred to hereinafter in footnotes 25 to 40.

[25] A Report on the State of Human Relations in Los Angeles County, of the Executive Secretary, Commission on Human Relations, October 14, 1959, at p. 2.

[26] The County Board of Supervisors is the elective legislative body of and for the County of Los Angeles, an area encompassing the City of Los Angeles.

[27] See: Report of Activities, Committee on Human Relations of County of Los Angeles, May, 1957, at p. 2.

[28] The local press of Los Angeles includes the Los Angeles Times, a newspaper of general and widespread circulation in Southern California; and the Los Angeles Tribune and California Eagle circulated widely among the Negro community in Southern California.

In the Petition for Writ of Certiorari on page 6, footnote 13 thereof, reference is made to a number of incidents; and there has

the exigency of having someone preach the gospel of brotherhood in Los Angeles, without fully grasping the ugliness which may compel him to do so anonymously.

In 1957, local newspapers carried stories of cross-burnings on Negro lawns[27] and mob resistance to Negro home-buying in caucasian neighborhoods.[28] The following year, the press reported damage in a newly bought home of a Negro couple in Long Beach;[29] five policemen stormed into a Negro home with guns drawn, to ransack the house without a warrant as the family, including children, looked on;[30] and of vandalism upon a Negro doctor's home.[31] Indeed, in May, 1958, the Los Angeles County Committee on Human Relations recounted thirty-six (36) incidents of racial conflict,[32] including bombings, arson and vandalism to Negro property in fringe areas; gang fights between ethnic and racial groups; armed assaults upon women and youths of an "enemy" race; retaliatory attacks in classrooms and on

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already been lodged with the Clerk of this Court a portion of the Los Angeles Times for June 24, 1958 reading "Negro Doctor's Home Damaged by Vandals"; the California Eagle for June 27, 1957 carries the banner "Burn Cross, Warning of Death"; the California Eagle for July 17, 1958 with the headline, "Vandals Strike Again in Night at Home of Glendale Couple" and the California Eagle, November 20, 1958 carries the banner "Vet Barred from FHA Housing Tract."

[27] Los Angeles Tribune, January 30, 1957 and April 17, 1957; California Eagle, June 27, 1957; Los Angeles Sentinel, September 10, 1959.

[28] Los Angeles Tribune, January 16, 1957.

[29] Los Angeles Tribune, June 27, 1958.

[30] Los Angeles Tribune, February 13, 1959.

[31] Los Angeles Times, June 24, 1958, heretofore lodged with the Clerk.

[32] Nor were these all. In its Report of Activities, May, 1958, at p. 16, the Los Angeles County Committee on Human Relations claimed that many such incidents not involving severe injuries or death go unreported.

streets by members of an "offended" racial group; and protest meetings to oppose Negroes moving into "restricted" areas.[35]

By December, 1958, racial tensions and discrimination, especially among juveniles, had become so acute within the County that the Board reconstituted the Committee on Human Relations as a Commission, and empowered it, *inter alia* to study and investigate racial problems within the County, and to bring back recommendations for appropriate remedial legislation.[36]

Nevertheless, newspapers continued to report instances of police brutality toward Negro prisoners,[37] vandalism to a Negro minister's home,[38] and more burning crosses.[39]

In October, 1959, the Executive Secretary of the County Commission on Human Relations stated:

> " . . . There have been more incidents of tension in the County [Los Angeles] this year than at any time during the last five years—tensions ranging from an altercation between a land lord and his tenant, growing out of the land lord's objection to his tenant's entertaining their minority group friends in their apartment, to much more serious expressions of hate and fear. The more serious of these involved vandalism against several houses, to the appearance of a mob of fifty or sixty persons (one of whom was armed

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[35] Report on Activities, Los Angeles County Committee on Human Relations, May, 1958, at pp. 12-16.

[36] See: Ordinance No. 7425, dated December 13, 1958, adding Article XXIX to the Administrative Code of the County of Los Angeles.

[37] Los Angeles Tribune, April 17, 1959.

[38] California Eagle; September 17, 1959, page 1, col. 4.

[39] California Eagle, September 10, 1959, page 1.

with a rifle), to intimidate a Caucasian who had sold his home to a Negro." [10]

Indeed, on November 14, 1959 the Federal Civil Rights Commission announced that it will hold hearings in Los Angeles and San Francisco in January focusing on problems of racial discrimination (AP dispatch, Washington, D. C., Nov. 14, appearing in Los Angeles Times for November 15, 1959).

To say, on this record, that petitioner must affix his name and address to his speech is to withhold from one in the exercise of his liberty the shield that safeguards the informer.

Whether ideas sail under the banner of respectable authorship, or none at all, seems to bear little relevance to a legitimate interest of the State. A citizen, first of all, has the right to be let alone (compare: *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Thomas* v. *Collins*, 323 U.S. 516; Compare: *Rumely* v. *United States*, 345 U.S. 41). That is a right vital to liberty (*Zimmerman* v. *Wilson*, 81 F. 2d 847, 849). Its roots are imbedded deep in the wisdom of that English jurist who said:

> "It is certain that every man has a right to keep his own sentiments if he pleases: he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends." [11]

As observed in *Watkins* v. *United States*, 354 U.S. 178, 200:

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[10] A Report on the State of Human Relations in Los Angeles County, Executive Secretary of Commission on Human Relations, 10/14/59, at p. 2.

[11] Judge Yates, in *Miller* v. *Taylor*, 4 Burr. 2303, 2379, 98 Eng. Rep. 201, 242 (KB 1769).

> "[There is no] general power to expose where the predominant result can only be an invasion of the private right of individuals . . . "

And this Court has particularly recognized the necessity of protecting this right from pillory or intimidation (*N.A.A.C.P.* v. *Alabama*, *supra*, p. 463; *Barenblatt* v. *United States*, 360 U.S. 109, 134).

The nexus between the right of privacy and the exercise of First Amendment rights, calls for judicial scrutiny of the claims advanced by the City in justification of its ordinance (*N.A.A.C.P.* v. *Alabama*, *supra*; *Sweezey* v. *New Hampshire*, *supra*; *Thomas* v. *Collins*, *supra*). The liberty to speak signifies nothing if not accompanied by the right to circulate (*Lovell* v. *City of Griffin*, 303 U.S. 444, 452). But the right to circulate, to be meaningful, must be exercised upon terms deemed by the speaker most suitable to the effective promotion of his cause. That is a decision which must be left for the advocate to make, and the reader to judge. The City may not substitute its judgment for either (*Martin* v. *Struthers*, 319 U.S. 141, at pp. 141, 148).

Undoubtedly, the right of privacy and speech must accede to a compelling subordinating interest of the State (*N.A.A.C.P.* v. *Alabama*, 357 U.S. 463; *Sweezey* v. *New Hampshire*, 354 U.S. 234, 265). When privacy is used to cloak incitement to unlawful action, the time is at hand for the state to intervene (Compare: *People ex rel. Bryant* v. *Zimmerman* (1928), 278 U.S. 63). But Los Angeles can make no such claim here. The ordinance is not so drafted, and it was not so construed by the Appellate Department.[42]

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[42] Hence, this Court must accept the construction put on the ordinance by the Appellate Department, the latter being the highest state court passing on it (*Kingsley International Pictures* v. *Board of Regents*, 360 U.S. 684).

Nor is petitioner charged with unlawful incitement, or defamatory or obscene utterances.[43] The City has simply said to him, in effect: It is all right to speak and write, as long as you put your name to it. In short, given a background of racial violence, the State would restrict what is said by prescribing how it may be said. This the State may not do (*Thomas* v. *Collins*, 323 U.S. 516; Cf. *DeJonge* v. *Oregon*, *supra*).

A society dependent on well-informed public opinion can ill afford to lock out ideas merely because they come unlabelled. The Public's need to hear these opinions is just as important as the individual's right to express them. By asking *all* authors, publishers and distributors to put their names to what they say and write, Los Angeles has thereby imposed an unreasonable burden on the commerce of ideas, impeding their progress toward peaceful reform.

B. *The Ordinance at Bar Is So Broad That It Embraces Speech Having No Reasonable Relation to Its Purpose, and Therefore Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

In proscribing the distribution of handbills "in any place, under any circumstances," the ordinance at bar transcends the bounds of reason or necessity.

Applied literally, the ordinance prohibits the dissemination of an anonymous circular whether at a union meeting, a church social or to one's friends in his own home. The ordinance prohibits distribution through the mails,[44] so

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[43] On the contrary, the dissenting judge characterized appellant's handbill as "plainly . . . not obscene, libelous . . . or otherwise [unlawful]" (R. 36).

[44] Mailing without identification is not an offense under the postal laws (*United States* v. *Chase*, 135 U.S. 255).

that a postman "distributing" the mails would conceivably come within its ban.

The ordinance embraces every kind of subject matter, irrespective of how expressed, or whether it may have any redeeming social value. It might even include an advertisement of a food sale, such as the two contained in the record at bar [R. 20A and 20B].

In balance, the ordinance at bar is too broad (*Staub* v. *City of Baxley*, 355 U.S. 313; *Jamison* v. *Texas*, 318 U.S. 413, 415-416; *Lovell* v. *Griffin*, 303 U.S. 444). Los Angeles asks too much; and much of what it asks bears no reasonable relation to what it seeks. There is nothing inherently libelous, obscene or fraudulent in anonymous speech which justifies its total proscription (compare: *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495; *Stromberg* v. *California*, 283 U.S. 359). Thus, by sweeping *all* speech within its ambit, the ordinance overreaches its objective, and in so doing, unnecessarily, and therefore, unlawfully, abridges protected activity (*Butler* v. *Michigan*, 352 U.S. 380; *Schneider* v. *Irvington*, 308 U.S. 147; *Martin* v. *Struthers*, 318 U.S. 141; *Thornhill* v. *Alabama*, 310 U.S. 88). Nothing appears in this record, or on the face of this ordinance, to show that the same objectives could not be reached by better draftmanship, or by traditional methods of law enforcement (*Butler* v. *Michigan*, *supra*).

It may be true that by asking all to identify themselves, the guilty are exposed, or at least, deterred from their unlawful pursuits. There are few, if any, statutes, however, whose laudable ends would not be more easily achieved by taking short-cuts through the fields of constitutional liberty (Jackson, *J.*, concurring in *Thomas* v. *Collins*, 323 U.S. 516, 547). But if mere convenience could excuse restraints on freedom, there would soon be little freedom left to restrain.

The myth of the ideal man who has nothing to hide begs the question: citizens simply resent being placed in a fish-bowl.[45] And when there is no better reason for putting them there than that offered by Los Angeles, it is time to yank them out.

C. *The Ordinance as Applied Deprives Petitioner of His Liberty Without Due Process of Law in Violation of the Fourteenth Amendment to the United States Constitution.*

Whether or not unlawful on its face, however, it is plain that the ordinance was applied in the instant case to punish speech which the State could not otherwise reach.

The record at bar reveals that petitioner was arrested for the mere act of *distributing* the leaflets in question on a Los Angeles street (R. 4). No claim was made at the trial, or since, that petitioner was disorderly, or that he thrust his messages into unwilling hands.[46] Nor is there evidence that petitioner was obstructing traffic, or preventing entry into and egress from the A and D Market.[47] Furthermore, the tenor and text of petitioner's pamphlets are a model of restraint and propriety—especially when it is considered what his stake is in its ideas.[48]

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[45] Borrowed from: Robison, *Protection from Compulsory Disclosure of Membership*, 58 Col. L.R. 614, 630.

[46] The evidence was only that the arresting officer received it [R. 4].

[47] The only evidence concerning petitioner's station is that he was distributing "at 55th and Holmes" [R. 4]. The address of the A and D Market is 5501 Holmes Avenue [R. 5], which would put its location at or near 55th and Holmes.

[48] Concededly, one of the leaflets makes an appeal for membership at twenty-five cents per month. But there is no contention here that such solicitation was unlawful, or made with the intention of enhancing petitioner's personal treasury.

Whatever pretensions Los Angeles makes to the title or control of its streets, it is clear that the City may not wholly deprive petitioner of their use for speech purposes (*Schneider* v. *Irvington, supra*, *Jamison* v. *Texas*, 318 U.S. 413, 415-416). Nor are moral, safety and welfare needs of the public satisfied by the suppression of lawful speech which grapples with those needs (*Thomas* v. *Collins*, 323 U.S. 516; *Cantwell* v. *Connecticut*, 310 U.S. 296).

The pamphlet expresses an idea: economic pressure to abolish racial discrimination in employment. That thought is not unlawful—at least in California.[49] Moreover, the leaflet does not *prescribe* a standard or level of Negro employment; only that there be *equal opportunity* for employment. As this Court has so often said, speech does not lose constitutional protection just because description has merged into lawful advocacy (*Thomas* v. *Collins*, 323 U.S. 516, 537; *Yates* v. *United States*, 354 U.S. 298, 318; cf. *Terminiello* v. *Chicago*, 327 U.S. 1).

Nevertheless, Los Angeles brings its police power to bear upon petitioner's speech simply because it is unlabelled. In short, the City is restricting what petitioner may say by ostensibly punishing him for saying it anonymously. It seems superfluous to add that if the demands of the ordinance carry its application this far, it cannot stand the test of constitutionality (*DeJonge* v. *Oregon*, 299 U.S. 353, 365).[50]

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[49] See: 30 Cal. Jur. 2d §116, p. 66.

[50] ". . . If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." (299 U.S. at 365.)

II

Los Angeles Municipal Code Section 28.06 Constitutes an Arbitrary and Unreasonable Classification Which Denies Equal Protection of the Laws, and Thereby Deprives Persons of Their Liberty and Property Without Due Process of Law in Contravention of the Fourteenth Amendment to the United States Constitution.

The ordinance in question, while apparently aimed at securing responsibility for what is said, levels its sights only on those who say it through handbills. Hence, the Legislature has carved out pamphlets as the most likely instruments of unlawful speech. The history and contemporary use of leaflets belies the implication; but even if it was justified, the ordinance places an oppressive and discriminatory burden on those whose speech is lawful, though poorly financed.

The pledge of the Fourteenth Amendment, as we learn from *Yick Wo* v. *Hopkins*, 118 U.S. 356, is the protection of equal laws. This is not to say that things different in fact must be treated the same in law; but rather that those similarly situated must be similarly treated (*Truax* v. *Corrigan*, 257 U.S. 312).

Here, the City Council, presumably concerned with irresponsible and offensive speech, written and disseminated anonymously, has classified handbills as the subject of remedial action. Yet, the capacity for abuse inheres no less in the book and newspaper than in the leaflet. It is fair to ask then just what it is in the latter which renders it a reasonable subject for this ordinance. True, the pamphlet may be manufactured more quickly and cheaply than the book or newspaper, and is therefore more likely to be the mode of communication used by those of modest means. But the Constitutional protection is not less because the

bank account is smaller (*Edwards* v. *California*, 314 U.S. 160). Nor can we discern anything inherent in the handbill which makes it the better candidate for the dissemination of unlawful speech. On the contrary: libel and pornography seem to have greater commercial value when sold to the public in books and magazines than do petitioner's leaflets which were distributed free.

When there is clearly—

> " . . . No fair reason for the law which would not require with equal force its extension to those whom it leaves untouched," [51]

the law violates the Equal Protection Clause of the Fourteenth Amendment.

The vice of the ordinance is not, however, only that it discriminates arbitrarily between modes of communication, but that in doing so, it restrains *lawful* speech while ignoring the very speech it was intended to cover.

An ordinance which attempts to single out some speech, and particularly lawful speech, for regulation, necessarily invites judicial scrutiny (*Korematsu* v. *United States*, 323 U.S. 214, 216).

> " . . . Classification like the one with which we are here dealing is . . . opening the door to legalized experiment. When fundamental rights are thus attempted to be taken away, however, we may well subject such experiment to attentive judgment. The Constitution was intended—its very purpose was—to prevent experimentation with the fundamental rights of the individual." (*Truax* v. *Corrigan*, 257 U.S. 312, 338).

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[51] *Missouri, Kansas & Topeka Ry. Co.* v. *May*, 194 U.S. 267, 269.

This does not inevitably deprive a classification within First Amendment areas of constitutional validity, for having determined what the evil is, the State is given wide latitude in selecting the means for coping with it. On the other hand, because we are dealing with fundamental liberties, any such classification undertaken by the Legislature must find support in reason, necessity and preciseness.

The legislative scheme at bar can claim none of these virtues. Its onus falls on the *lawful* speech of those who can or choose to communicate it only by anonymous leaflet, leaving undisturbed *unlawful* speech circulated anonymously and for profit. Such a classification bears no reasonable relation to its purpose, and therefore fails to afford equal protection of the laws.

But the ordinance is inequitous for still another reason, in that its burden lays upon the lawful utterances of the pamphleteer, but not on the same speech when uttered by the editor or the printer. We fail to appreciate the logic in withholding constitutional protection from the speech of some which others in the same class may continue to enjoy simply because they put it between hard covers or in a letter to the editor.[32] We do not believe that the law has yet reached that stage of development which would permit a City to parcel out liberty of speech to those only who are able and willing to make a profit from it. Until that happens, the classification at bar must be regarded as an arbitrary deprivation of liberty without due process of law, and a denial of the equal protection of the laws.

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[32] Compare petitioner's pamphlets with those of the A and D Market [R. 17-20B].

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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APPENDIX "A"

Constitutional Provisions and Statutes Involved

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The provisions of Section 28.06 of the Municipal Code of the City of Los Angeles are:

> "28.06—Hand-Bill. Name and Address of Manufacturer-Distributor:
>
> "No person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover; or the face thereof, the name and address of the following:
>
> (a) The person who printed, wrote, compiled or manufactured the same.
>
> (b) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon."

Service of the within and receipt of a copy thereof is hereby admitted this.....day of December, A. D. 1959.

_____

_____

IN THE

Supreme Court of the United States

October Term, 1959
No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

RESPONDENT'S BRIEF.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

STATUTES

TEXTBOOKS

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PEOPLE OF THE STATE OF CALIFORNIA.

RESPONDENT'S BRIEF.

The petitioner was duly arraigned on April 8, 1958, in Division 30A of the Municipal Court of the Los Angeles Judicial District, upon a verified complaint filed April 2, 1958. He was charged with a violation of Section 28.06 of the Los Angeles Municipal Code. The cause was continued to April 28, 1958, for entry of plea. On that date a demurrer to the complaint was overruled by the court and the defendant granted leave to plead. He entered a plea of not guilty and the trial was set for May 27, 1958, in Division 7. On that date the cause was transferred to Division 30A where trial was had. The defendant was convicted of the charge and he appealed from the judgment and the denial of his motion for a new trial. The appeal was taken in the Appellate Department of the Superior Court in and for the County of Los Angeles, State of California. The conviction was affirmed by that court on November 17, 1958. A writ of certiorari was duly granted by this court on June 29, 1959.

The Issues.

1. Whether anonymity of expression, traditionally and currently, is a part of the scheme of free speech and includible within the purview of the First and Fourteenth Amendments to the Constitution.
2. Whether such anonymity, if so included, is subject to the exercise of the police power by a municipal legislative body.
3. If anonymity is so subject to regulation, whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000), is a reasonable exercise of police power.
4. Whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000) as applied to the petitioner under the facts of this case as duly reported in the Transcript of the Record, violates due process of law as guaranteed him by the Fourteenth Amendment.
5. Whether the ordinance, Section 28.06, Los Angeles Municipal Code (Ord. 77,000), is an unreasonable classification and hence is violative of the equal protection guarantee of the Fourteenth Amendment.

Rules of Law Involved.

The free speech and free press provisions of the First Amendment to the Constitution; the due process and equal protection clauses of the Fourteenth Amendment, and Section 28.06 of the Los Angeles Municipal Code (Ord. 77,000), all of which are set forth in Appendix A hereto.

ARGUMENT.

Summary of Argument.

1. Free expression is not sufficiently broad to include the right to distribute unidentifiable handbills upon the public streets. The guarantees of free speech and press are not absolute and are subject to a reasonable exercise of the police power by a municipal legislature. If the borders of free expression are extended to include anonymity, Section 28.06 of the Los Angeles Municipal Code is a valid and reasonable regulation. The social value of anonymous expression is not of paramount consequence when contrasted to the varied social needs of a community. The effect of the ordinance so challenged is to establish a parity between a speaker and a writer. It represents neither censorship, prior restraint, nor is it a mandate controlling contents. It simply facilitates access to those persons injured or defamed to civil redress, and aids in law enforcement if the pamphlet violates the law.
2. The petitioner is a distributor and cannot champion the constitutional rights of an unknown author. Anonymity does not extend to him because his position in placing information before the public demands constant social intercourse. He cannot complain, then, of hostility to the ideas; he has accepted the exposure and assumed the risks.
3. The ordinance does not represent an unreasonable classification. The nature of a handbill is such as to create unique distinctions, foreign to other types of publications. When a circular is anonymous and unidentifiable these variances can promote certain social evils which the legislature can validly suppress.

I.

The Ordinance Under Which Petitioner Was Convicted Constitutes a Valid Exercise of the Police Power.

A. The Guarantees Accorded Free Speech Are Not So Unqualified as to Preclude Reasonable Police Power Regulation of Anonymity in Expression.

It is an established principle that the right to express oneself freely has not been so canonized as to place it beyond the reach of those charged with legislative responsibilities (*Near v. Minnesota*, 283 U. S. 697). The freedoms of the First Amendment (hence the Fourteenth Amendment, *Near v. Minnesota, supra*) "are not absolute," and the experience of these civil liberties imply the existence of an organized society maintaining public order, without which liberty itself would be lost in excesses and restrained abuses. (*American Communication Ass'n v. Douds*, 339 U. S. 382).

The Fourteenth Amendment, together with the First Amendment, does not prevent reasonable, non-discriminatory regulation that preserves peace, order and tranquility without deprivation of the First Amendment guarantees of speech (*Poulos v. New Hampshire*; 345 U. S. 395), and permits affirmatively a reasonable and valid exercise of police power to promote public convenience in the interest of all (*Cox v. New Hampshire*, 312 U. S. 569). This court "has recognized that free speech is not itself a touchstone." (*Niemotko v. Maryland*, 340 U. S. 268, Justice Frankfurter in a concurring opinion.)

The ordinance now under the scrutiny of this court is one involving the distribution of handbills. There is no question that "liberty of circulation is as essential to the freedom as liberty of publishing; without the circulation

the publication would be of little value." (*Ex parte Jackson,* 96 U. S. 727, 733; *Lovell v. Griffin,* 303 U. S. 444). However, it follows that the liberty of circulation, like its counterpart freedom to speak, is subject to the same reasonable restrictions. (*Schneider v. State,* 308 U. S. 146.) Ancillary to a consideration of the ordinance, it appears provident to examine several general principles.

A nebulous and sometime phantasmatic line (*cf. Saia v. New York,* 334 U. S. 558, and *Kovacs v. Cooper,* 336 U. S. 777), is to be perceived establishing propriety in police power exercise in regulation of expression. Some might refer to it as "la belle dame sans merci." This court itself has recognized the problem:

> "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in line, or helping to establish it, are fixed by decisions, that this or that concrete case falls on the nearer or farther side."
>
> *Carpenters & Joiners Union v. Ritter's Cafe,* 315 U. S. 722, citing: *Hudson County Water Co. v. McCarter,* 209 U. S. 349, 355.

What then are the so-called landmarks or points in line? There can be no question that *license* and *censorship* stand diametrically opposed to the Anglo-American concept of free expression. A government-issued license to publish was subjected to scorn as early as 1644 by Milton before Parliament (see Areopatica, Everyman's Library, pp. 22-36, 1927). This court has dealt with censorship in its boldest form by denominating it as an unconstitutional exercise of police power, and hence a violation of due process. The necessity of a permit from the City Manager "strikes at the very foundation of freedom of

the press". (*Lovell v. Griffin, supra.*) Nor does placing with a chief of police discretionary power to grant a permit render such exercise any more constitutional (*Schneider v. Irvington*, 308 U. S. 147). (See also: *Kunz v. New York*, 340 U. S. 290, and *Niemotko v. Maryland, supra.*) A tax upon free expression is deemed void (*Grosjean v. American Press Co.*, 297 U. S. 233). (*Cf. Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495, and *United States v. Paramount Pictures, Inc.*, 334 U. S. 131.)

Problems akin to censorship arise when the contents of an expression collide with public convenience and morality. An occlusion by a sovereignty to that which is said should not be and is not compelled by due process. On the contrary, this court has determined whether "it is a regulation of conduct . . . employed by public authority as a cloak to hide censorship of unpopular ideas . . . or . . . a legitimate attempt to protect the public not from the remote possible effects of noxious ideologies, but from the present excesses of direct, active, conduct . . . are not presumptively bad, because this interferes with and in some manifestations restrains the exercise of First Amendment rights." (*American Communication Ass'n v. Douds, supra.*) "Fighting words" that stir the listeners to threaten the public peace are not protected. (*Feiner v. New York*, 340 U. S. 315; *Chaplinsky v. New Hampshire*, 315 U. S. 568.) Obscenity in expression is not held to be within the protected class of speech (*Chaplinsky v. New Hampshire, supra; Roth v. United States*, 354 U. S. 476; *Alberts v. California*, 354 U. S. 476.) Neither is its distribution (*United States v. Alpers*, 338 U. S. 680.) Manifestly, grave problems arise when regulatory measures are placed upon the contents of expression; the decided proximity to a control of beliefs is apparent. Justice Douglas,

joined by Chief Justice Warren and Justice Black, remarked that:

> "The First Amendment embraces two concepts: freedom to believe, and freedom to act; the first is absolute, but in the nature of things, the second cannot be, conduct remaining subject to regulation for the protection of society (*Black v. Cutler Laboratories*, 351 U. S. 292.).

In respect to the "act" this court has found that free expression can be reasonably restricted as to time, place and manner. (*Kovacs v. Cooper, supra; Saia v. New York, supra; Schneider v. State, supra; Cantwell v. Connecticut*, 310 U. S. 296.) Highly pertinent to the case at bar are certain "points in line" that give a judicial interpretation to the "reasonableness" of regulation of assertive conduct coincidental to free expression; more specifically to communication by means of pamphlets or handbills.

There is an absolute right to utilize the public streets as a means of dissemination of informative handbills. It provides a forum, no less important than Rome's, for free discussion. More stringent regulations can be placed upon commercial leaflets. However, since the petitioner in this case was not engaged in a commercial venture *per se*, any limitations placed upon circulars pointed toward economic advantage are of no consequence. (*Breard v. Alexandria*, 341 U. S. 622.) (*Cf. Jamison v. Texas*, 318 U. S. 413.)

When restriction is placed upon non-commercial leaflet distribution, this court, in determining constitutionality, has looked to the interest sought to be protected by the municipality as opposed to the extent of encroachment upon the guarantees of free expression. In short, a balancing process. (*Martin v. Struthers*, 319 U. S. 141.)

It goes without saying that a blanket or absolute prohibition of non-commercial leaflet circulation is void (*Hague v. C. I. O.*, 307 U. S. 496; *Jamison v. Texas, supra*), as is a requirement of a permit (*Schneider v. Irvington, supra*). The interest of a municipality in keeping its streets uncluttered by leaflets is subservient to the right to use the streets for public communication through the media of non-commercial pamphlets (*Jamison v. Texas, supra*). That peaceful distribution, door to door, of religious pamphlets is of a greater social consequence than is the interest of eliminating undesired intrusions upon late sleepers (*Martin v. Struthers, supra*). Quasi-public land, owned privately, cannot attach restrictions which deny the constitutional right of free expression (*Marsh v. Alabama*, 325 U. S. 50. *Cf. Tucker v. Texas*, 326 U. S. 517.) However, the cases dealing with non-commercial pamphlets go no further. From them it is clear that no pertinent analogy can be drawn and no rule synthesized for determining the constitutionality of Section 28.06 of the Los Angeles Municipal Code. (See Appendix "A".)

Petitioner relies on the historical significance of anonymous writers in his contention that anonymity is established in the scheme of free expression. Much mention has been made of the eighty-five Federalists Papers that were penned under the fictitious name of "Publius" but which were in fact written by James Madison ably assisted by Alexander Hamilton and John Jay. At the time of their writings the government of this country was struggling under the Articles of Confederation and these great patriots were arduously seeking support and advocating the adoption of the Constitution. It is not to be idly observed that these same anonymous writers were leaders in the authorship and the drawing together of the great democratic principles in the formation of this

Republic. Their faith in anonymous expression was apparently of insufficient strength for them to effectuate in the Constitution a guarantee for anonymity.

It was Mr. Madison who unsuccessfully championed the belief that the guarantee of free speech and press should be made applicable to the several states. Such thought was rejected in the First Amendment in the Bill of Rights (Annals of Congress 1, 755, cited in "Constitution of the United States" (1952), United States Printing Office, Washington, D. C.) This demonstrated his profound faith in free expression. Perhaps he felt the social value of anonymity in expression was outweighed by the right of the citizens to be informed. In any event, several lines of cases bearing a kinship to the case at bar would unequivocably concur with him, if such were his contention.

In a dissenting opinion, Mr. Justice Roberts observed that no constitutional infringement of free speech resulted in requiring *identification* by persons holding themselves out with an especial knowledge or background in a state community. (*Thomas v. Collins*, 323 U. S. 516.) (The majority opinion founded its reversal upon a prior restraint: required registration as a condition precedent to making a speech. It was deemed unconstitutional on that basis.)

Two cases requiring disclosure of membership lists under a state statute have been before this court. The more recent was *NAACP v. Alabama*, 357 U. S. 449. The court expressed a deep concern for the inviolability of privacy in group association and the traditional freedoms accorded thereto. No question can be raised concerning "the substantial detriment" to those on the membership rolls in the State of Alabama. Totally unjustifiable hardships would arise, however, the immunity granted did not extend to agents or employees.

In the earlier case, *New York ex rel. Bryant v. Zimmerman,* 278 U. S. 63, the court found that disclosure of membership rosters of organizations requiring an oath as a condition of membership was a "proper exercise of the police power. It would operate as a substantial deterrent from violations of public or private right to which the association might be tempted if disclosure were not required", in that the members' names would then be a matter of public record.

Mr. Justice Harlan, speaking for the court in NAACP, tried to reconcile and distinguish both cases and hence demonstrated a decided reluctance to overrule the *Zimmerman* decision. Now, as then, such is a highly onerous task, perhaps requiring the ultimate remedy ministered to the Gordian Knot. It is submitted that if both cases are given juxtaposition, it is difficult to use either as a "point in line" for contrast or comparison to the case at bar.

Dissemination of information through the United States mails has not been accorded anonymity. Congress, under the postal power, enacted certain legislation under 37 Statutes at P. 553, Chapter 389, subsequently amended 39 U. S. Code Title 39, Chapter 6, Section 233 (1933), that provides, *inter alia* that newspapers using the second class mails, and hence claiming the substantial pecuniary benefits attached thereto, must, as a condition to such use, publish in each copy mailed a sworn statement containing the names of the editor, publisher, owner and stockholders. Failure to so comply results in positive criminal sanctions. This court has upheld a conviction under such legislation:

> "Congress, in the interest of the dissemination of current intelligence, may so legislate as to the mails."
>
> *Lewis Publishing Co. v. Morgan,* 229 U. S. 288.

The *Lewis* case, *supra*, utilized the theory of *privilege* as to the mails, to justify regulation. In one of the latest expressions by this court, *Roth v. United States, supra,* the absence of this theory was pronounced. However, the regulatory features of communication in the postal power have withstood the constitutional challenge.

Under the *Lewis* decision it appears that those who share responsibility in newspaper endeavors have no constitutional right to go unnoticed. The reader is entitled to know of their identity.

The federal government has denied persons who solicit or are recipients of money for the purpose of influencing legislation the right to remain anonymous under the Federal Lobbying Act (2 U. S. C. Sec. 307). This court held constitutional such rule in *United States v. Harris,* 347 U. S. 612. Mr. Chief Justice Warren stated in the majority opinion:

> "The Act does not violate freedom to speak, publish or petition the Government. Members of Congress are not expected to explore the myriad of pressures to which they are regularly subjected. *They should be able to evaluate them.* Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment, while masquerading as proponents of the public weal. The act . . . . has merely provided a *modicum of information.*" (Emphasis ours.)

Thus, the cloak of anonymity was pierced, and any right to remain incognito as a lobbyist was successfully banished.

In the field of publication and distribution of election materials, the identical proposition has been uniformly deemed by the courts of the several states non-violative of due process.

Under the Minnesota Corrupt Practices Act it is required that he who distributes or causes to be distributed any election publication is responsible for its bearing the name and address of the author and candidate in whose behalf such is circulated. This is coupled with the further requirement that, if any person knowingly publishes a false statement about a candidate or proposition, he shall be adjudged guilty of a misdemeanor. Convictions have been sustained under this statute: see *Olson v. Billberg*, 151 N. W. 550; *Hanley v. Wallace*, 163 N. W. 127, both cases passing upon General Statutes, "Corrupt Practices Act" Minnesota, Section 573 (1913). The precise issue of required identity went unquestioned in *Dart v. Erickson*, 248 N. W. 706, construing Mason's Minnesota Statutes (1927), Sections 539 and 544.

The State of Florida enacted legislation requiring a copy of any charges or attack against a candidate to be served upon the attackee, if the charges were made within 18 days prior to the primary election, violation of which was a misdemeanor. (Florida Comp. Gen. Laws, Section 8189 and Revised Statutes, Section 5925.) The Supreme Court of that state upheld the statute in *Ex parte Hawthorne* (1934), 156 So. 619. The Chief Justice, Mr. Davis, remarked in the opinion of the court:

> "The statute may be said to be an aid, rather than a deterrent to the enjoyment of the right of free speech, by restraining the launching of secretly prepared charges and attacks."

The court recognized the necessity of an affirmative rule of law, rather than solely negative consideration, in exploring the labyrinth of free expression.

The Supreme Court of Kansas upheld a statute "prohibiting anonymous publications that criticized candidates' personal characters or their political actions." (See *State v. Freeman* (1936), 143 Kan. 315, 55 P. 2d 362, passing on validity of Section 25-1714, Revised Statutes of Kansas (1923).) The court indicated that there is *nothing* in the Bill of Rights that denies the right to enact legislation which prohibits anonymous writings or publications. The "obvious intent" and purpose of the statute was found in clearly and definitely fixing the responsibility for this method of campaigning.

> "A voter is entitled to know who is responsible for a publication, irrespective whether it is malicious propaganda or truth." (*State v. Freeman, supra*).

In *State v. Babst* (1922), 104 Ohio St. 167, 135 N. E. 525, the highest court of Ohio upheld a similar statute passing upon section 13343-1, General Code, Part 4, Title 1, Chapter 18. It remarked that it is "merely a regulation to prevent anonymous statements that might easily result in fraudulent and corrupt motives."

Perhaps the most lucid comments concerning anonymity in expression have come from the Pennsylvania court in *Commonwealth v. Evans* (1944), 156 Pa. Super. 321, 40 A. 2d 137. In holding constitutional Section 1846, Pennsylvania Election Code, which prohibits anonymous publication of a circular or other printed matter reflecting upon the personal character or political actions of a candidate for public office, the court developed several novel but profound insights in the relation of anonymity and free expression. It observed:

> "It compels the writer, exercising his freedom of the press, to disclose his identity and assume respon-

sibility, *just as a speaker,* exercising his right to free speech, identified himself by the very fact of articulation, and ipso facto, becomes responsible for his utterance. It is an attempt to extirpate the dirty business of surreptitious character assassination. *The Bill of Rights, which guarantees the precious right of literary expression, does not contain one syllable which protects anonymous writers.*" (Emphasis ours.)

B. If Such Privilege Is Found to Exist, the Interest of Los Angeles in Enacting Section 28.06, Los Angeles Municipal Code, Was of Such Significance in the Scale of Social Values That It Substantially Outbalances Any Benefits Accruing to an Unidentifiable Pamphlet.

The interest of Los Angeles in requiring identification of one who causes pamphlet distribution is based upon socially pressing needs. Seeking the abolition of fraud, deceit, false advertising, negligent use of words, obscenity, and libel are salutary goals for a municipality. In requiring such identification, the government is given a means of ascertaining a culpable party and is facilitated in placing responsibility that may arise. Assuredly, the public is served.

If the remarks are libelous, and not within the protection of due process, the ordinance clearly aids law enforcement. (*Beauharnis v. Illinois*, 343 U. S. 250.) If civil liability is incurred, the aggrieved party can swiftly pursue his remedies and defend himself in an attempt to mitigate his damaged reputation.

Perhaps, the interest of signal importance is the grant of security given by Los Angeles to its citizens in the

discouragement of invasions of individual privacy. Sanctions against such conduct are not violative of the due process guarantees of free speech. (*Donahue v. Warner Brothers Pictures,* 194 F. 2d 6.)

The existence of a right of self-sanctity was declared and recognized in the prophetic article, "The Right to Privacy." (Harvard Law Review, Vol. IV, No. 5, pages 194-220, Warren and Brandeis.) This right, and its corresponding liability sounding in tort, is currently enjoying promulgation throughout varied jurisdictions. Significant to the case at bar, it has been recognized in California. (*Gill v. Curtis Publishing Company,* 38 Cal. 2d 273, 239 P. 2d 630.) Its development and growth germinated from:

> "The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man under the refining influence of culture has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual." (The Right to Privacy, *supra,* p. 196.)

The legislatures, like the courts, have come to realize this need. The challenge to them can be simply stated:

> "They have recognized a man's home as his castle, impregnable, often, even to the court's own officers engaged in the execution of its commands. Shall the courts (and the legislature) then close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?" (The Right to Privacy, *supra,* p. 220, parenthesis ours.)

California answers this question in the negative and extends protection to: "The right to live one's life in seclusion, without being subjected to unwarranted and unclaimed publicity, or simply the right to be left alone." (See *Gill v. Curtis Publishing Co., supra*, p. 276.)

Los Angeles responds also in the negative. Cannot it then be said that Section 28.06 has given an effective remedy to the private citizen in the form of an available means of discovery, thus expediting any civil redress that might be his?

The interest of the government in promoting the dissemination of current intelligence has been held to be a social interest worthy of encouragement by public policy (*Lewis Publishing Co. v. Morgan, supra.*) Section 28.06, Los Angeles Municipal Code, has the wholesome effect of purifying rather than stultifying the information contained therein, thus giving the recipient a better basis to judge the contents. By identifying the person interested in distributing a pamphlet, the tenor of the comments take on new meaning. For example, a leaflet circulated by Ezra Pound would have a decidedly different import than the same remarks disseminated by either Robert Hutchins or Cardinal Newman, or Sir Laurence Olivier. If the person causing such distribution was a known chronic prevaricator, or his general reputation in the community for integrity was bad, or if such person was an accepted authority on the matters contained in the leaflet, all of these factors would tend to enlighten the recipient. The name was evidentiary value and autoptic proference.

Rules of evidence developed through human experience are aimed at presenting facts in their purest form to a tribunal. The tribunal affected by Section 28.06 is the

Open Market of Ideas: one worthy of every idea and thought but deserving proper perspective. The ordinance fills precisely this need.

The ordinance herein does not represent license or censorship. Nor does it limit the contents of the pamphlet. It simply establishes a parity in placing the person causing distribution on the same plane as a speaker. It is an effort to affirmatively protect speech; a freedom "from" rather than a freedom "to." Recognizing the need of such legislation Mr. Justice Jackson, in his dissenting opinion in *Kunz v. New York*, 340 U. S. 290, quoted from Bertram Russell's "Authority and the Individual" (page 25):

> "The problem, like those with which we are concerned, is one of balance; too little liberty brings stagnation, and too much brings chaos."

C. The Ordinance as Applied to the Petitioner Does Not Offend the Due Process Clause.

A close reading of the record indicates that the petitioner was merely a distributor. There is a resounding silence and voidness of evidence showing his responsibility for the contents of the dodger. Hence, it is difficult, if not impossible, to perceive how he can strongly advocate the cause of anonymity in publication. It is submitted that the petitioner cannot be heard to complain about any possible abridgment of freedom of speech that might affect a stranger to this case; that is, the person who *sponsored the circulation of the pamphlet.* (See App. A.)

It is fundamental that:

> "One attacking the constitutionality of a statute is not the champion of any rights, except his own." (Justice Cardozo, *Henneford v. Silas Mason Co.*,

300 U. S. 577; Also see *Frank L. Young Co., v. McNeal-Edwards Co.,* 283 U. S. 398 and *Bode v. Barrett,* 344 U. S. 583.)

In the case at bar it would appear that the petitioner, as the distributor, is trying to fill the sponsor's shoes and furthermore to act as his constitutional spokesman. Assuming, however, that he is in a position to validly challenge the ordinance, his claim, again, is without merit.

The petitioner was presumably circulating the pamphlets in question in a public place. He had effectively exposed himself to any potential public reprisal, violence and all those frightful things he complains of, as his justification for attaching the due process guarantees to anonymity in expression. He is claiming anonymity from the very adversaries he is meeting face to face. Futhermore, the sponsor apparently thought that his idea was sufficiently acceptable to potential recipients to solicit their aid. He even put a telephone number and address where he could be reached.

It is submitted that if anonymity is a constitutional right, under these circumstances, the petitioner is not the party to claim it.

II.

The Ordinance Does Not Make an Unreasonable Classification and Hence, Does Not Violate the Equal Protection Clause of the Fourteenth Amendment.

It is fundamental that legislative discrimination is inoffensive to the equal protection clause when it reflects the fact, or legislative belief, that evils in the same field are of different dimensions and proportions requiring different remedies, or when the discrimination occurs as a

consequence of reformative legislation which takes one step at a time and addresses itself to the phase of the problem which seems most acute to the legislative mind.

Williamson v. Lee Optical of Oklahoma, Inc., 348 U. S. 483.

The legislature is free to recognize degrees of harm; a law which hits the evil where it is most felt will not be overthrown because there are other instances to which it might have been applied.

West Coast Hotel v. Parrish, 300 U. S. 379.

While the Constitution, in enjoining the legal protection of the laws upon states, precludes irrational discrimination as between persons or groups of persons in the incidence of a law, it does not require situations which are different in fact or opinion to be treated in law as though they were the same.

Goesart v. Cleary, 335 U. S. 464.

The deference due to the judgment of a state legislature in the matter of statutory classification alleged to deny equal protection of the laws, is especially to be observed when local conditions which the court cannot know, may affect the answer to the crucial question of whether the court can say, on its judicial knowledge that the legislature could not have had any reasonable ground for believing there were such public considerations as to justify the distinction made.

Dominion Hotel v. State of Arizona, 249 U. S. 265.

The limitation in Section 28.06 of the restrictions to handbills is not arbitrary and unreasonable. The dictates of experience demonstrate that books, magazines,

and more formal publications are highly susceptible to identification. Most contain the names of the various authors, editors, and publishers. Pamphlets and dodgers are, of course, substantially different. They are inexpensive to publish, and are capable of being printed by the simplest of devices. Damage can be wrought and the perpetrator's tracks covered in a mere moment of time.

Thus, the legislative discrimination is reasonable when compared to the interests sought to be protected.

Conclusion.

The judgment should be affirmed.

Respectfully submitted,

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APPENDIX "A".

Constitutional Provisions and Ordinances Involved.

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The provisions of Section 28.06 of the Municipal Code of the City of Los Angeles are:

> "28.06—Hand-Bill. Name and Address of Manufacturer-Distributor:
>
> "No person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover, or the face thereof, the name and address of the following:
>
> (a) The person who printed, wrote, compiled or manufactured the same.
>
> (b) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PETITIONER'S REPLY BRIEF

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases:

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PETITIONER'S REPLY BRIEF

I

While Freedom of Speech Is Not Absolute, It Is Nonetheless So Fundamental and Indispensable to Ordered Liberty that It May Not Be Abridged by State Action Save When Government Is Confronted by a Serious and Substantial Evil to Other Basic Rights of Individuals

(Replying to Point I-A of Respondent's Brief, pp. 4-7)

While petitioner certainly does not claim for speech a perfect immunity from state action, nevertheless, it cannot be gainsaid that freedom of speech and press are absolutely

indispensable to a democratic society (*Thornhill* v. *Alabama*, 310 U.S. 88, 95). Inevitably, however, the question arises as to where and how to draw the line between liberty and the police power.

In a highly complex, nuclear age, state action tends toward paths of least resistance. Police power exercised to assuage popular opinion and appease national emotions, is far easier to justify than the often conflicting abstract concepts which maintain the dignity of the individual. But though the rationale underlying the First Amendment may be more difficult to explain to a society apprehensive about its national security, the fact remains that the shortest route to totalitarianism is through the arbitrary abridgement of the Bill of Rights.

Freedom of speech and press, therefore, rank as fundamental rights precisely because they are the touchstone of free and democratic institutions. It follows that these basic rights must occupy a preferred position if they are to safeguard liberty and human dignity against the stealthy encroachments of state action.

Accordingly, it is the character of the *right*—rather than the *limitation*—which determines where and how the line shall be drawn.

Now, in hewing a line of constitutional state action, respondents *concede* that the state may not:

1) Interfere with circulation of the press (Resp. Br. p. 4), and

2) License or censor the press (Resp. Br. p. 5).

This *concession* is important, because the broad, unlimited ordinance at bar—punishing *all* anonymous speech, under *all* circumstances and at all places—obviously tends to "interfere with circulation", and to "censor". Espe-

cially is this so where the author resorts to anonymity because advocating ideas in a hostile community.

Respondent, on the other hand, stresses that the boundaries of lawful speech stop at "fighting words" and "obscene expressions" (Resp. Br. p. 6). They correctly point out that such speech "can be reasonably restricted as to time, place and manner" (Resp. Br. p. 7).

But that is precisely the vice of this ordinance. It is *not* limited to "fighting words", or to "obscene expressions". Nor is it narrowly drawn as to "time, place and manner." On the contrary, it is phrased to encompass *all* speech, including speech normally protected from state infringement.

Again, at p. 7 of its brief, the City *admits* that the distribution of non-commercial handbills is a constitutionally protected right. It follows, of course, that the sweeping, unqualified limitation on the exercise of that right abridges the First Amendment to the United States Constitution, speaking through the Fourteenth. (*Thornhill* v. *Alabama*, 310 U.S. 88).

II

The Circulation of Anonymous or Pseudonymous Leaflets Is Protected by the First Amendment

(Reply to Point I-A of Respondent's Brief, at pp. 8-13)

Respondent makes the startling suggestion that because the First Amendment is silent on the use of anonymous expression, it is thereby left unprotected (Resp. Br. pp. 8-9). By the same logic, it may also be observed that the First Amendment does not exclude "obscene" speech or "fighting words" from its ambit. This reasoning would then make it rather difficult to explain how this Court held

such speech was unprotected in *Roth* v. *United States*, 354 U.S. 476 and *Chaplinsky* v. *New Hampshire*, 315 U.S. 568.

It does not become simply a question of whether "anonymity", or "circulation", or "intent", fit within the "constitutional scheme" of free expression. Some times — as in *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, freedom of speech, press and assembly may be lost or impaired if anonymity is not protected. Therefore, if speech will be abridged without these other elements, the latter must then be protected in order to preserve speech (Compare: *Lovell* v. *Griffin*, 303 U.S. 444; *Thomas* v. *Collins*, 323 U.S. 516; *Winters* v. *New York*, 333 U.S. 507; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 141.; *Smith* v. *California*, 28 L.W. 4033 [decided Dec. 14, 1959]).

Respondent relies (at p. 9 of its brief) on a dissenting opinion in *Thomas* v. *Collins*, supra, for the proposition that a state statute requiring identification of a labor organizer as a condition for soliciting membership was not unconstitutional. Of course, the majority opinion in that case took just the opposite view.[1]

If one has the right to convey ideas, he retains the right to do so under conditions which he deems appropriate to the circumstances (*Martin* v. *Struthers*, 319 U.S. 141, at pp. 141, 148). Government cannot impose that choice upon him without thereby censoring or inhibiting expression. To tell a Negro that he can circulate, in an all-white neighborhood, a leaflet calling for integration in housing, employment or schools only if he puts his name to it may very well bring upon him economic, social or even physical recrimination (See: *N.A.A.C.P.* v. *Alabama*, supra, at p. 462; Petitioner's opening brief, pp. 21-25).[2] It is not enough

[1] And see the amicus curiae Brief of the United States Solicitor General filed with this Court in that case.

[2] And see Appendix, attached to this Brief.

to say that Los Angeles has no statute which punishes such speech, when in fact it is known or expected that punishment will be suffered at the hands of private groups hostile to those ideas. (*N.A.A.C.P.* v. *Alabama*, supra, at pp. 462-463; *Watkins* v. *United States*, 354 U.S. 178, 198; *Emspak* v. *United States*, 349 U.S. 190, 195).

Respondents accept this view, and go on to say of the N.A.A.C.P. case:

> "No question can be raised concerning the substantial detriment to those on the membership rolls in the State of Alabama. Totally unjustifiable hardships would arise, however, [sic] the immunity granted did not extend to agents or employees." (Resp. Br. p. 19).

Since the material and statements in petitioner's opening brief concerning racial strife and violence in Los Angeles is uncontroverted, it would appear from the foregoing quotation in respondent's brief that the City is virtually *conceding error*. On the other hand, respondent's own quotation from *New York ex rel. Bryant* v. *Zimmerman* (278 U.S. 62), shows that the Ku Klux Klan was undeniedly then engaged in acts of violence, which is not only unprotected, but which the state has the right to and duty to suppress.

The statutory requirement of disclosure as a condition for using second class mailing privileges is not in point here for several reasons. For one thing, Congress is there exercising its postal powers, expressly conferred by the United States Constitution. Since Congress could abolish secondary mailing privileges altogether, it retains broad powers to impose conditions on the use of that privilege (*Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288). But it is very doubtful that Congress could provide that *all* mail

ing must be signed (See: *Lewis Publishing Co.* v. *Morgan*, supra).

Moreover, if the reader is entitled to know the identity of the publisher or stockholders of a newspaper, which, after all, is a private, commercial enterprise for profit, it is because as a taxpayer he is heavily subsidizing its dissemination of information by second class mail.

Besides, even though newspapers bear the names of the editor and publisher, they carry anonymous articles and letters, so that speech is not seriously impaired. However, the ordinance at bar touches *everyone* who publishes or distributes leaflets anonymously anywhere.

The lobbying and corrupt practices acts to which respondent alludes (pp. 1013) are special statutes, narrowly drawn for particular areas.[3] Their function is essentially to preserve the purity of the legislative and electoral process. In other words, while the elimination of anonymity puts some limitation on speech, it also purports to preserve basic democratic freedoms.[4]

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[3] *United States* v. *Harris*, 347 U.S. 612, relied on by Respondent (Resp. Br. 11), upheld the Federal Registration Lobbying Act on narrow grounds: first, because it was aimed directly at a specific evil; and, secondly, in order to avoid violating the constitutional guarantee of freedom of speech and press, this Court held that the Act applied only to direct contact with members of Congress, and not to the usual media of speech and press. (Citing *United States* v. *Rumely*, 345 U.S. 41).

The instant ordinance is clearly directed at, and sweeps within its ambit, all method of communication, to all persons, anywhere in the City of Los Angeles where the means of communication is the handbill—traditionally, the poor man's newspaper.

[4] It is to be noted, however, that in the *Minnesota* (*Olson* v. *Billberg*, 151 N.W. 350 and *Hanley* v. *Wallace*, 163 N.W. 127) and *Florida* (*Ex Parte Hawthorne*, 156 So. 619) cases cited in respondent's brief at p. 12, the question of anonymity was not at all at issue. The rulings in the *Minnesota* cases turned on the question of whether the statements made by or in behalf of one candidate about the other were false, and substantially affected the election. In the *Florida* decision the court held the statute inapplicable to a radio "campaign" speech given within 18 days of the election. Likewise, the *Kansas* and *Pennsylvania* statutes were

But the ordinance here, limiting *all* speech, under all circumstances, can make no such claim.

III

The Municipal Ordinance at Bar Does Not on Its Face or as Construed[5] Deal with a Serious and Substantial Evil Such as Would Justify an Infringement of Lawful Speech

(Replying to Point I-B of Respondent's Brief at pp. 14-17)

Respondent contends that Los Angeles Municipal Code Section 28.06 is designed to abolish fraud, deceit, false advertising, negligent speech, obscenity and libel (Resp. Br. p. 14). Yet, nowhere does the ordinance declare this as its objective, nor is it preceded by legislative findings of necessity for encroaching on protected liberties. And it is obvious from the record at bar that the arresting officers did not deem themselves limited to such objectives in enforcing the ordinance. Because Section 28.06 is so broad that it covers even lawful speech, we do not see how a court can be expected to *infer* from its mere enactment the existence of a

---

narrowly limited to aim at libelous character assassination of political candidates (*State* v. *Freeman* [1936], 143 Kan. 315, 55 P. 2d 362; *Commonwealth* v. *Evans* [1944], 156 Pa. Super. 321, 40 A. 2d 137). The Ohio statute, in *State* v. *Pabst* [1922], 104 Ohio St. 167, 135 N.E. 525) was also limited to circulars or advertisements which *tended to defeat candidates for public office or constitutional amendment.* It may be noted in all three of these last mentioned statutes, incidentally, that the identities of the distributor or author were not required, but rather the identities of the chairman or other officers of the issuing organization, or some responsible voter, were required therefor.

[5] The petitioner urged, in the court below, in oral argument, that the leaflets distributed in the instant case complied with the requirements of the ordinance; and that the California courts construed the ordinance, in order to save it from unconstitutionality, as permitting the distribution of leaflets in issue. The California courts rejected this contention and construed the ordinance as applicable to the leaflets herein.

serious and substantial evil warranting an infringement of liberty. Else, how would any constitutional right be safe from legislative abuse.

As for the whole business of protecting the public from "libel" or "invasions of privacy", the short answer is that the ordinance at bar is not so limited. The First Amendment cannot be bridged by careless draftsmanship; nor can salutary goals excuse the needless loss of liberty.

Respondent's argument (at pp. 16-17) presupposes that anonymous works are socially useless—even harmful *per se*—and that it is better for speech if it is tagged and labelled like peas and garments.

As petitioner pointed out in his opening brief, some of the practical and historical usages of anonymity were, and still are, to put forward ideas on their own merit, to encourage communication, or even, as here, to foster the belief that an idea has widespread support.[6]

We are fortunate that ours is not a totalitarian system where anonymity is essential to unorthodox communication. But as respondent itself recognizes (pp. 9-10), there are times, places and circumstances in the United States in which anonymity is a prudent condition for the exercise of lawful, albeit controversial, speech.[7]

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[6] Petitioner's opening brief, pp. 17-22.

[7] See petitioner's opening brief, pp. 22-25. Compare: *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Watkins* v. *United States*, 354 U.S. 178; dissenting opinion of Justice Black in *Barenblatt* v. *United States*, 360 U.S. 109, 134, 156-159.

IV

Petitioner's Leaflet Is Protected by the First Amendment Whether He Be the Distributor or the Author, and Hence the Ordinance as Applied to Petitioner Is an Unconstitutional Deprivation of His Liberty and Property Without Due Process of Law.

(Replying to Point I-C of Respondent's Brief, at pp. 17-18)

Respondent seeks to put petitioner in the shoes of a distributor, in which status, it is contended, he cannot claim the protection which the First Amendment gives to anonymous writings (Resp. Br. pp. 17-18).

Furthermore, the desirability of a label as "evidentiary value and autoptic proference" is essentially a judgment matter for the speaker as much as for the reader. If one chooses to broadcast his ideas anonymously, he does so knowing the absence of his name may cast doubts on their validity. But the choice—whether exercised wisely or not—is still his. That, after all, is the meaning of a free society. If the state takes away the freedom to make that decision—at all times, places and circumstances—it is censoring and licensing speech no less than if it sought to punish the speech directly.

We do not believe the record permits an inference that the petitioner is not the author of the leaflets at bar; nor is it illogical to assume that he, in fact, wrote them. But, in any event, the distinction is irrelevant, for

> ". . . without the circulation, the publication would be of little value." (*Ex parte Jackson*, 96 U. S. 727, 733; *Lovell* v. *City of Griffin*, 303 U.S. 444, 452).

If a distributor cannot assert the liberty of anonymity, then no one can, and that freedom is lost for all practical purposes. However, this Court has consistently rejected the contention that only the party directly injured can claim constitutional protection.

As recently as last December, this Court upheld the claims of a book-seller to freedom of circulation of press and of speech (*Smith* v. *California*, 28 L.W. 4033 (decided Dec. 14, 1959)). Manifestly, Smith was asserting *societal* rights in these freedoms which were appropriate for him to assert.

In *Pierce* v. *Society of Sisters*, 268 U.S. 510, the rights of "present and prospective patrons of schools" were successfully asserted by a plaintiff school.

Barrows v. *Jackson*, 346 U.S. 249, involved a defendant who invoked the rights of Negro buyers of real property to defeat a damage suit alleging he had breached a restricted covenant.

And in *N.A.A.C.P.* v. *Alabama*, supra, of course, an organization was held entitled to assert the right of its members to remain anonymous.

It is clear, therefore, that if anonymity is entitled to protection, petitioner has the right to claim it. Particularly is this so since he is being punished for the non-disclosure.

V

The Ordinance at Bar Is an Arbitrary Classification Which Violates the Equal Protection Clause of the Fourteenth Amendment

(Replying to Point II of Respondent's Brief, at pp. 18-20)

There is little petitioner can add to his opening brief on this point other than to stress the unfair and unreasonable distinctions which the ordinance makes between commercial pornography or libel bound in hard cover, and lawful expression, poorly financed. It does not follow as respondent seems to suggest (p. 20), that the cheapness of the means of communication renders it the more susceptible to abuse. If that is the rationale underlying the ordinance, then it is obviously unconstitutional.

Conclusion

The judgment should be reversed.

Respectfully submitted,

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APPENDIX

Acts of violence, against members of racial minority groups, in Los Angeles County, due to racial tensions, described in Reports of the Commission on Human Relations of the County of Los Angeles.*

Some of these official reports have heretofore been referred to in our Opening Brief, at footnotes 24, 25, 27, 34, 35, 40 and heretofore lodged with the Clerk of this Court, for the convenience of this Court.

Concurrently with the filing of this Reply Brief, there is lodged with the Clerk, the most recent Report of the Commission, entitled "Special Incidents of Tension or Potential Tension by Supervisorial Districts".

I

The ordinance which established the Commission contained findings of fact and declarations of policy which are as follows:

> "The Board of Supervisors finds that racial tension and conflict contribute substantially to the creation of juvenile delinquency and adult crime; that prejudice, intolerance and discrimination against any individual or group because of race, religion, national origin or cultural background promote tension and conflict; that such prejudice, discrimination, tension and conflict are, therefore, a menace to peace and public welfare; that to eliminate such prejudice and intolerance and thereby promote public health, welfare and security, an instrumentality should be established through which practices to achieve better human relations can be provided, and private persons and groups may be officially assisted in promoting good will and better relations among all people."

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* The Commission, an official agency of the County of Los Angeles, was appointed by the Los Angeles County Board of Supervisors pursuant to Los Angeles County Ordinance No. 7425, referred to in Footnote No. 6, page 14, Petitioner's Opening Brief, adopted May 19, 1942 (erroneously cited as having been adopted December 13, 1959).

II

The most recent report of the Commission, entitled "Special Incidents . . ." etc., *supra*, contains the following examples of situations where violence has resulted from community tensions:

> "During the months of October and November, 1958, an extremely serious and dangerous situation developed in the community of Bassett. A Negro school teacher and his family bought a home in that community, and tensions developed to the point where more than 150 persons, forming a mob, appeared before the Negro owner's home in an attempt to coerce and intimidate him out of the neighborhood. Action on the part of the Sheriff's Department, and subsequent action by a group of citizens organized by the Commission's staff, prevented serious conflict from ensuing. (p. 1)
>
> * * *
>
> "In February, 1959, the Sheriff's Department reported two attempted arson cases against two separate houses located in the community of Duarte. From the investigation conducted by the Sheriff's Department and by a member of the staff of the Commission, it would appear that these incidents were related to the fact that a report had been made in the community that the homes involved were being shown to Negro persons who were interested in purchasing them.
>
> * * * (p. 1)
>
> "In August, 1958, the home of a Negro man in the Hollywood Hills area was damaged, allegedly by a neighbor who resented his presence in the community. The Commission staff held meetings with interested persons in the area, with a view of changing attitudes towards the entry of the minority group

person into that community. The situation is now relieved and quiet.

"* * * (p. 2)

"On January 31, 1959, the Los Angeles County Sheriff's Department reported that a cross had been burned on the grass in the front of a house occupied by a Negro, located at 1230 West 91st Street. No prosecution was involved. The neighborhood is about 90% Caucasian and less than 10% Negro. The Sheriff's Department indicated that they would continue their investigation in order to determine, if possible, who had set fire to the cross and why.

"* * * (p. 2)

"In July, 1959, this office received a report of several incidents of property damage inflicted upon the home of a Negro physician and his wife in the View Park area. . . .

"The home of a Negro physician located in the View Park area of Los Angeles has, for the past several week-ends, been the subject of an egg-throwing attack by unidentified parties in the community. During the latter part of October, 1959, someone slipped into this physician's home and smashed several eggs inside his grand piano. The following week-end, eggs were smashed against the rear of his home, and it is reported that if the attacks continue it will be necessary for the owner to repaint his $60,000 home because of the damage that has been done to it by the egg attack. It is reported, also, that the homes of several Negro persons in this area have had the same kind of treatment over the last several months. This situation, of course, has caused serious tension in the community, with some of the Negro residents fearful lest eggs change to stones and stones to bullets.

"* * * (p. 3)

"On November 23, 1959, this office received a report from the Los Angeles County Sheriff's Office that a cross, wrapped in kerosene soaked rags, had been burned in front of a home in the southeast section of Los Angeles on or about the evening of November 15, 1959. The home is owned by a Negro. The immediate neighborhood is predominantly Caucasian. A similar incident occurred at this home in early 1958. A further investigation is being carried out. (p. 4)

. . . .

"A Negro family, moving for the first time into the City of Compton into a home they had just purchased, were menaced and threatened by a mob of white neighbors, to the extent that they reloaded their moving van that had just brought their personal effects, and returned to an apartment in Los Angeles that they had just vacated. It is reported that all the windows in the front of the house—some nine in number—and three windows in the rear of the house, were smashed the night the family returned to their apartment. This family feels that it has been intimidated severely, and have decided that they would not move into the house because of a fear for their personal safety. (p. 6)

. . . .

"A severe tension situation developed almost simultaneously in the Pacoima and the Northridge areas. These two incidents were related to each other. It seems that a Caucasian who owned a home in Pacoima sold it to a Negro, and bought a new home for himself in Northridge. A group of his former neighbors in Pacoima—some sixty in number, and one reportedly armed with a rifle—visited his home en masse one Sunday afternoon in August to intimidate and coerce him in connection with the sale of his house in Pacoima to this Negro family. The police had to be called in order to disperse this mob. (P. 8)

. . . .

"At the same time that the above was occurring, a series of incidents began to happen to the Negro family that had bought the home in Pacoima. Telephone calls, with threats of coercion and intimidation, were received. Since that time in the middle of August until the present date, some forty or fifty separate incidents involving annoyance and malicious mischief have been perpetrated on this family in Pacoima. Because of what has happened to this family, a great deal of tension has been generated in the Pacoima community, particularly on the part of the Negro residents, who feel that the annoyances against this one Negro family are in some respects related to the general attitude of Caucasians in that community with respect to the residence of Negroes in certain areas of the Pacoima community. The Commission staff has worked closely with the Pacoima Human Relations Committee in an attempt to lessen this tension. This situation has claimed the attention of staff on a continuing basis since last September. (p. 8)

"A tension situation was precipitated in Monrovia during the month of August, when a Negro family purchased and occupied a home in what had previously been an all-white neighborhood of better class residences. This home has been ransacked, and telephone calls of intimidation and coercion have been received by this family—which, incidentally, consists of a mother and four children. Very recently, during the month of October, the home was ransacked again, and at this time one of the children of this mother living at home allegedly saw a Caucasian man in the house, armed with a rifle. It is reported by the Monrovia Human Relations Committee that the feelings and expressions on the part of both the Negro and the Caucasians in the area have ebbed and flowed, with some unfavorable attitudes being expressed toward each other. (p. 9)

. . . . .

"In November, 1959, a Negro widow and her twenty-year old son moved into a home on Brownridge Street in North Pasadena. She began receiving calls of threat and intimidation. Shortly thereafter, the hose in her front yard was turned on when she was away teaching at school, and flooded the place. Subsequent to this, the hose was cut. A few days later, the tires on her automobile were slashed and, on November 15, while she was away from home, someone slipped into her home by slashing through her screen door and set a fire in her bedroom closet. Only the fact that she had to return home unexpectedly prevented the home from going up in flames. Her entire wardrobe was lost. (p. 3)

* * *

"In November, 1958, the owners of two automobile wash racks in Burbank received anonymous notes to the effect that if they did not discharge their Negro employees, their stations would be bombed. News items appeared in the local press on this matter, and a large section of the population of Burbank was rife with tension for more than a week. Such a situation reinforced the attitudes of those persons in that community who had long resisted the entry of minority group persons there. (p. 7)

* * *

"Some few months ago—prior to August, 1959—a Negro family moved into the Florecita Drive area of Altadena, and there were some subsequent acts of vandalism against the home they were building. Some time during the latter part of July or August, a second Negro family purchased a home in this general area. (p. 8)

* * *

"As can be seen from the reports covering each of the five Supervisorial Districts, there have been some thirty incidents involving interracial tension and con-

flict over the past twelve month period. A rather close search of our records reveals the fact that there has been a growing number of incidents over the last several years, but that those occurring over the last twelve-month period represent more such incidents than have occurred in the previous three-year period combined. (p. 10)

"There is some question in the minds of the Commission and its staff as to how many of the incidents which occur actually come to our attention. A rather rough guess would be that we receive notification of no more than ten or fifteen per cent of the situations that develop in various places in the County. (p. 10)

"It should be stressed that we have received reports of other situations that have not been included in this report. We have attempted to include here only those situations in which actual violence or severe intimidation occurred, or were prevented from occurring due to the action of either members of the Commission staff, community persons with whom the staff worked, or police agencies. Every single Supervisorial District in the County has had some incidents over the last twelve-month period. It is apparent from this report, however, that a greater number of such occurrences are developing in the San Gabriel and the San Fernando Valleys than in any other areas of the County. It is probable that situations similar to those reported here will continue to develop in those areas in other suburban communities throughout the County as members of minority groups begin to disperse themselves more widely throughout the total community. (p. 10)

III

An Earlier 1959 Report (previously lodged with the Clerk) of the Commission revealed that:

"1. Over the past year, we have dealt with incidents of tension in the following communities: Altadena (three incidents), Burbank, View Park, Glendale,

Temple City, Southwest Los Angeles, Southeast Los Angeles, Torrance, Hollywood, Monrovia, Northridge, Granada Hills, Long Beach, Bassett, Duarte, Compton, Pacoima, and Pasadena.

"It is important to stress the fact that these are not the only communities in which tensions and conflict took place. They were the only ones reported to the Commission in time to take some kind of action. The majority of these incidents occurred around the issue of members of minority groups moving into restrictive neighborhoods.

"Included in these incidents were two cases of mobs gathering to intimidate and coerce; four cases of rather extreme vandalism, two cross-burning episodes, and two attempts at arson.

"There were more than forty situations of community tension and conflict handled by the Commission staff since the last annual report was made.

"2. * * *

"3. * * *

"4. * * * For the past twenty years, here in the Los Angeles areas, the Mexican-American and the Negro population have increased four or five times faster than the Anglo population. The total minority group population of Los Angeles County, including approximately 375,000 Jews and 70,000 Orientals, now approaches 1,500,000 persons—about 23% of the total County population. It appears as though this trend of the increasing percentage of minority group persons in the total metropolitan area will continue in the years to come."

IV

The results of such population changes in the opinion of the Commission is illustrated by the January 1959 Report of the Commission (on file with the Clerk).

". . . To date, Los Angeles County has been fortunate in avoiding such extremes of segregation and

overcrowding, but if our minority populations continue to outstrip our total population in rate of growth, and if they are confined to certain segregated areas—either by custom or force—the same potentially explosive situation will develop that has led to rioting and violence in the East and South."

V

Earlier incidents were reflected by the 1958 Report of the Commission (on file with the Clerk).

"Police protection of a rather protracted nature was required in one incident, after the home in which two Negro women were living had been stoned, and later subjected to a relatively mild explosive device called a 'cherry bomb'. Usually such violent reaction to the 'invasion' of a neighborhood by a minority group person takes place in areas of relatively low or middle income groups. The incident referred to above, however, took place in an area of high priced homes averaging from $35,000 to $75,000 in value.

. . .

. . .

"Sociological Implications of Today's Problems

"The extent to which the problems outlined thus far reach into and exercise control over the day to day activities and behavior of the citizens in this County is difficult to exaggerate. It is plainly evident that discrimination and segregation in employment and housing deprive a large portion of the citizenry of its privileges as citizens in the American democracy. For this reason alone it becomes the concern of every American to change this pattern. Other by-products of discrimination are less evident, but equally as far-reaching and important. One such by-product is the tension and conflict that develops between different ethnic groups within the population as the result of one having a superior status and the other having an inferior status in the body politic.

"This tension and conflict is being reflected in a variety of ways. We have already called attention to tensions that have developed in certain areas of the County around the matter of housing. More serious, however, are the conflict situations that are reported between juvenile groups stemming, in part, from racial antagonisms, and in part from territorial antagonisms.

"Following is a listing of the various incidents of tension and or conflict stemming from all sources that have come to the attention of the Committee over the past twelve months period:

"*Housing Incidents*

"A. Los Angeles City

"1. Protest meeting held by home owners when home was purchased in neighborhood by Negro family. No organized demonstration.

"2. Demonstration by home owners. Destruction of property purchased by two Negro sisters in a 'high class' residential section.

"3. 'Cherry bomb' was exploded in mail box of Negro home owners referred to under "2", causing approximately $35.00 damage.

"4. Community unrest, bordering on demonstration, in connection with a rumor that a second Negro family was about to purchase a home in the neighborhood.

"5. A police agency reported concern over the possibility of trouble when a Negro family moved into a 'restricted' community.

"6. A group of community persons held a meeting and planned possible group action against Negro family that purchased a home in the neighborhood. Later a fire mysteriously developed in the interior of this home, which was unoccupied at the time.

"B. Outside City of Los Angeles

"1. Violent demonstration took place when Negro purchased home in area.

"2. Three attempts at arson were made against homes at which prospective Negro buyers were looking.

"3. Situation highly charged with tension developed when Negro professional man purchased a home in the area. This tension lasted for several days. No open conflict.

"4. Report was received of tension developing in a suburban community when Japanese family moved into the neighborhood.

"5. A cross-burning incident took place in an unincorporated area of the County. This cross was set on the property of a Negro family (one of three) that had lived in the community for seven years. There is some question as to whether or not this is a bona fide racial incident."

VI

Even earlier problems were reflected by the 1957 Report of the Commission (on file with the Clerk).

"In 1943, it became apparent to the Los Angeles County Board of Supervisors that a danger to the orderly growth and development of this community resided in the increasing tension then developing in several areas of the County based upon the differences that existed between the population so far as race, religion and culture were concerned. The Los Angeles County Commission on Human Relations was subsequently founded by the Board of Supervisors in order that planning for the purpose of preventing this type of conflict might be promoted.

"* * *

"Since 1950, the population of Negroes alone has increased in the City of Los Angeles by 48.8%—a per-

centage increase five times as great as the increase in the general population over a six-year period. One out of every three persons that has moved to or been born in the City of Los Angeles since 1950 has been a Negro. When we exclude from the general population growth in the City the persons of Negro, Oriental, Mexican-American and Jewish background, it is not hard to see that considerably more than half of the population increase has consisted of individuals who fall into the category of the so-called 'minority group.'"

(8647-0)